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**Supreme Court of the United States**

**OCTOBER TERM, 1964**

**No. III**

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**DEPARTMENT OF MENTAL HYGIENE  
OF CALIFORNIA, PETITIONER,**

**vs.**

**EVELYN KIRCHNER, ADMINISTRATRIX OF  
THE ESTATE OF ELLINOR GREEN VANCE.**

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**ON WRIT OF CERTIORARI TO THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

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**PETITION FOR CERTIORARI FILED MAY 21, 1964  
CERTIORARI GRANTED OCTOBER 12, 1964**

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 111

DEPARTMENT OF MENTAL HYGIENE  
OF CALIFORNIA, PETITIONER,

vs.

EVELYN KIRCHNER, ADMINISTRATRIX OF  
THE ESTATE OF ELLINOR GREEN VANCE.

ON WRIT OF CERTIORARI TO THE SUPREME COURT  
OF THE STATE OF CALIFORNIA

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[fol. a]

[File endorsement omitted]

[fol. 1]

**IN THE  
SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE CITY AND COUNTY  
OF SAN FRANCISCO**

Department No. 5.

No. 510,122

Honorable BYRON ARNOLD, Judge.

DEPARTMENT OF MENTAL HYGIENE OF THE  
STATE OF CALIFORNIA, Plaintiff,

vs.

EVELYN KIRCHNER, Administratrix of the Estate of  
ELLINOR GREEN VANCE, Defendant.

**Clerk's Transcript**

**APPEARANCES:**

For the Plaintiff: Stanley Mosk, Attorney General of  
the State of California, by Elizabeth Palmer, Deputy and  
John C. Porter, Deputy Attorney Gen'l, 600 State Building,  
San Francisco 2, California.

For the Defendant: Messrs. Dinkelspiel & Dinkelspiel,  
by Alan Dougherty, Esquire, 234 Marshall Street, Redwood  
City, California.

[fol. 3]

• COMPLAINT FOR MONEY—Filed April 19, 1961

Plaintiff above named complains of defendant above  
named and for cause of action alleges:

**I**

That heretofore and on or about January 15, 1953,  
Auguste Schaeche was duly adjudged mentally ill by the

Superior Court of the State of California in and for the County of San Francisco and by the court committed to Agnews State Hospital where she has been a patient since January 15, 1953, and where she now is a patient receiving board, care, maintenance, and medical attention from said institution as a patient thereof.

## II

That Ellinor Green Vance, deceased, was the daughter of said Auguste Schaeche and as such was legally responsible for the support, care, maintenance, and medical attention furnished to said Auguste Schaeche at Agnews State Hospital; that said Ellinor Green Vance died on or about August 25, 1960.

## III

That pursuant to the provisions of section 6651 of the Welfare and Institutions Code of the State of California the Director of Mental Hygiene determined the rate for the care, support, maintenance and medical attention of said Auguste Schaeche; that said charges were made continuously for every month said incompetent person was a patient at Agnews State Hospital.

## IV

That for the period August 25, 1956, through August 24, 1960, there became due and owing to the Department of Mental Hygiene of the State of California for the care, support and maintenance of said incompetent, the sum of Seven Thousand, Five Hundred Fifty-Four and 22/100 (\$7,554.22) Dollars; that no part of said sum has been paid; that the entire sum is now due, owing and unpaid.

## V

That Letters Testamentary were by order of the Superior Court of the State of California in and for the County of San Francisco in proceeding No. 154752 in the files of

said court issued to Evelyn Kirchner, defendant herein; that the said Evelyn Kirchner was duly qualified as administratrix and entered into the discharge of her duties and ever since her appointment has been and now is the duly qualified and acting administratrix of the Estate of Ellinor Green Vance, Deceased.

## VI

That on or about November 3, 1960, plaintiff herein filed a verified Creditor's Claim in the sum of \$7,554.22 with said defendant as executor of the estate of said deceased by filing said claim with the clerk of the Superior Court of the State of California in and for the City and County of San Francisco wherein the said estate was and ever [fol. 5] since has been and now is pending within the jurisdiction of said court; that a copy of said claim is attached hereto marked Exhibit "A" and made a part hereof as though fully set forth herein.

## VII

That on or about January 25, 1961, said claim was rejected by said administratrix, Evelyn Kirchner.

## VIII

That there is now due, owing and unpaid from defendant herein as executor of said estate to the plaintiff herein, the total sum of Seven Thousand, Five Hundred Fifty-Four and 22/100 (\$7,554.22) Dollars, no part of which has been paid; that said defendant has failed and refused to pay the sum or any part thereof.

Wherefore, plaintiff prays judgment against said defendant Evelyn Kirchner, as administratrix of the Estate of Ellinor Green Vance, deceased, and against said estate for the sum of Seven Thousand, Five Hundred Fifty-four and 22/100 (\$7,554.22) Dollars, for board costs and medical attention furnished to Auguste Schaeche at Agnews State Hospital for the period of August 25, 1956, through August 24, 1960, to be paid out of the funds of the estate in due course of administration of said estate together with legal



4  
interest thereon from the date hereof; for plaintiff's costs of suit and for such other and further relief as to the court may seem just and proper.

Stanley Mosk, Attorney General of the State of California; Elizabeth Palmer, Deputy, John C. Porter, Deputy, Attorneys for Plaintiff.

[File endorsement omitted]

(Exhibit "A" Attached)

[fol. 7]

IN THE SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

DEMURRER TO COMPLAINT—Filed May 24, 1961

Now comes the defendant, Evelyn Kirchner, Administratrix of the estate of Ellinor Green Vance, and demurs to the complaint in the above entitled action as follows:

I.

That the same does not state facts sufficient to constitute a cause of action in that said complaint fails to allege that said incompetent has no estate out of which the claim of plaintiff can be satisfied.

Wherefore, defendant prays that plaintiff take nothing by its said action, but that the same be dismissed, and that the defendant have judgment against plaintiff for defendant's costs incurred herein.

Dated: May 23, 1961.

Dinkelspiel & Dinkelspiel, By: Dougherty, Alan A.,  
Attorneys for Defendant.

I, Alan A. Dougherty, one of the attorneys for the above named defendant, do hereby certify that the above demurrer to plaintiff's complaint is not interposed for the purpose of delay and that in my opinion the issues therein raised are well taken in law.

Alan A. Dougherty.

[fol. 8]

# Memorandum of Points and Authorities

Welf. & Inst. C. 6650 provides in part as follows:

" \* \* \* The husband, wife, father, mother, or children of a mentally ill person or inebriate, and the administrators of their estates, and the estates of such mentally ill person or inebriate, shall be liable for his care, support, and maintenance in a state institution of which he is an inmate. The liability of such persons and estates shall be a joint and several liability, and such liability shall exist whether the mentally ill person or inebriate has become an inmate of a state institution pursuant to the provisions of this code or pursuant to the provisions of sections \* \* \* "

Apparently, plaintiff relies on this section as the basis of its claim set forth in the complaint on file herein.

Welf. & Inst. C. 6650 was interpreted by the court in the Guardianship of Thrasher (1951) 105 C.A. 2d 768 in which the court held that a husband was liable to the Department of Mental Hygiene under similar circumstances even though the wife had a separate estate or other means out of which the claim of the State Department could have been paid. The court followed the reasoning set forth in the case of Meyer's Estate, Myrick, Probate Court Report 178 where the court says:

"It is the duty of the husband to maintain the wife, [fol. 9] whether she be sane or insane; and while he has the ability so to do, resort cannot be had to her estate."

In the Thrasher case the court looked to all statutory provisions covering the relationship of husband to wife and his liability therefor and found that there is a primary liability on the part of a husband to support the wife and that the obligation does not cease when the wife is adjudged insane.

In the case before this court the defendant is the estate of a deceased adult daughter; there never was any primary responsibility on the part of the adult daughter to support the mother. To the contrary, there never was a duty of any kind on the deceased daughter to support the mother. C.C. 206 reads in part as follows:

"It is the duty of the father, the mother, and the children of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability \* \* \*."

Therefore, Welf. & Inst. C. 6650 must be read together with C.C. 206.

Further, Welf. & Inst. C. 6650 must be read together with Welf. & Inst. Co. 6655 which reads in part as follows:

"If any person committed to a state mental hospital has sufficient estate for the purpose, the guardian of his estate shall pay for his care, support, maintenance and necessary expenses at the mental hospital to the [fol. 10] extent of the estate."

Dinkelspiel & Dinkelspiel, By: Alan A. Dougherty,  
Attorneys for Defendant.

(Proof of Service by Mail Attached)

[File endorsement omitted]

[fol. 11]

IN THE SUPERIOR COURT OF CALIFORNIA  
IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

MINUTE ORDER—June 1, 1961

No. 510,122

Department No. 13

Vol. 652, Page 66

Dem. sub:

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IN THE SUPERIOR COURT OF CALIFORNIA  
IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

MINUTE ORDER—June 7, 1961

No. 510,122

Vol. 652, Page 71

Dem. overruled—10 days to answer.

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[fol. 12]

IN THE SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

NOTICE OF OVERRULING DEMURRER—Filed June 13, 1961

To the Above Named Defendant and to Her Attorney, Alan Dougherty:

You and Each of You Will Please Take Notice that the demurrer interposed by the defendant to the complaint on file herein has been overruled and defendant is given ten days in which to answer the complaint herein.

Dated: June 12, 1961.

Stanley Mosk, Attorney General of the State of California; Elizabeth Palmer, Deputy Attorney General; John Carl Porter, Deputy Attorney General, Attorneys for plaintiff.

Affidavit of Service by Mail (omitted in printing).

[fol. 13]

[File endorsement omitted]

[fol. 14]

IN THE SUPERIOR COURT OF CALIFORNIA  
IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

ANSWER TO COMPLAINT—Filed June 22, 1961

Comes now the defendant and in answer to the complaint on file herein alleges:

## I.

Answering Paragraph II of said complaint defendant denies that Ellinor Green Vance, deceased, was legally responsible for the support, care, maintenance, and medical attention furnished to said Auguste Schaeche at Agnew State Hospital or any other place whatsoever.

## II.

Answering Paragraph VIII of said complaint defendant denies each and every allegation therein contained and denies that she is indebted to the plaintiff in the amount of Seven Thousand Five Hundred Fifty-Four Dollars Twenty-Two Cents (\$7,554.22) or in any other sum whatsoever.

Wherefore, etc.

As and for a Further, Separate and Distinct Defense to the complaint on file herein defendant alleges as follows:

## I.

That on or about the 15th day of January, 1953 said Auguste Schaeche was duly adjudged incompetent by the Superior Court of the State of California, in and for the City and County of San Francisco and ordered committed to the state asylum for insane at Agnew, California, where she now is.

[fol. 15]

## II.

That on the 9th day of October, 1956 on the petition of Ellinor Vance, the adult daughter of said incompetent, said Ellinor Vance was appointed the guardian of the estate of said August Schaeche, an incompetent, by the



Superior Court of the State of California, in and for the City and County of San Francisco, being matter number 139898 therein, and on the same day said Ellinor Vance qualified as guardian and letters of guardianship were thereupon issued to her.

### III.

That thereafter and on the 23rd day of October, 1956 on petition of Department of Mental Hygiene of the State of California for an order directing payment by the guardian for the care, support, and maintenance of said Auguste Schaeche, the court made its order giving the Department of Mental Hygiene an equitable lien on the estate of said incompetent for the sum of Six Thousand Four Hundred Twenty-Five Dollars (\$6,425.00) for accrued charges for the care, maintenance and medical attention of said incompetent for the period ending September 30, 1958, and for such other sums as may become due the Department of Mental Hygiene for further support of said incompetent; that attached hereto and by this reference made a part hereof is a true and correct copy of said order.

### IV.

That on or about the 25th day of August, 1961, said Ellinor Vance died, and thereafter, and on the 16th day [fol. 16] of January, 1961, upon the petition of Evelyn Kirchner, said Evelyn Kirchner was appointed the guardian of the estate of said incompetent, Auguste Schaeche. That thereafter said Evelyn Kirchner, as the guardian of the estate of said incompetent, caused the real property in said guardianship to be sold for the net amount of Ten Thousand Nine Hundred Three Dollars Thirty-Five Cents (\$10,903.35) which said balance is now being held on deposit by Bay Counties Title Guarantee Company of San Francisco, California. That on the 7th day of April, 1961, said Evelyn Kirchner requested of plaintiff, as guardian of the estate of said incompetent an itemized statement setting forth the amounts due plaintiff on account of care, maintenance and medical expenses incurred on account of said incompetent so that the same could be presented to

the court and paid, but the plaintiff herein refused and continues to refuse to render said statement.

V.

That because of plaintiff's refusal to make arrangements for the payment of its claim from the estate of the guardianship of said incompetent, plaintiff should be estopped from asserting its claim against this defendant.

Wherefore, etc.

As and for a Second Further, Separate and Distinct Defense to the complaint on file herein defendant alleges as follows:

I.

That by reason of the order of October 23, 1958 and attached hereto the rights of plaintiff have been fully adjudicated and determined, and the plaintiffs now have a lien for the amount sued for herein on the assets on deposit in the guardianship proceeding heretofore referred to.

Wherefore, defendant prays that plaintiff take nothing by its complaint and defendant be hence dismissed with its costs.

Dinkelspiel & Dinkelspiel, By: Alan A. Dougherty,  
Attorneys for Defendant.

[File endorsement omitted]

*Duly sworn to by Evelyn Kirchner, jurat omitted in printing.*

[fol. 18]

IN THE SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS—  
Filed November 7, 1961

I

This is an action brought by plaintiff, Department of Mental Hygiene of the State of California, against the estate of a deceased daughter for the support of her incompetent mother who is presently confined in a state mental institution. Plaintiff seeks reimbursement from the daughter's estate for the maintenance of the mother pursuant to the provisions of section 6650 of the Welfare and Institutions Code of the State of California. (All references to code sections herein are to the Welfare and Institutions Code unless otherwise specified.)

The Complaint sets out all the necessary allegations to support the action; namely:

(a) That on January 15, 1953, Auguste Schaeche was adjudged mentally ill by the Superior Court of the County of San Francisco and committed to Agnews State Hospital, where she has been a patient since the above date, receiving board, care, maintenance and medical attention.

(b) That Ellinor Greene Vance, deceased, was the daughter of said patient, and as such was legally responsible for the support, care, maintenance and medical attention provided to said Auguste Schaeche at Agnews State Hospital, and that said Ellinor Greene Vance died on or about August 25, 1960.

[fol. 19] (c) That pursuant to section 6651 of the Welfare and Institutions Code, the Director of Mental Hygiene determined the rate for care of said patient and that charges were made each month said person was a patient at Agnews State Hospital.

(d) That for the period August 25, 1956, through August 24, 1960, there became due and owing to the Department of Mental Hygiene for the care of said patient, the sum of \$7,554.22, and that said sum has not been paid and is now due, owing and unpaid.

(e) That Letters Testamentary were, by order of the Superior Court for the County of San Francisco (SF 154752) issued to Evelyn Kirchner, defendant herein; that said Evelyn Kirchner qualified as administratrix and is now the duly qualified administratrix of the estate of Ellinor Greene Vance, deceased.

(f) That on November 3, 1960, plaintiff filed a verified Creditor's Claim in the sum of \$7,554.22 and that said claim was rejected by the administratrix on January 25, 1961.

(g) That there is now due, owing and unpaid from the defendant herein as administratrix of said estate, to the plaintiff herein, the sum of \$7,554.22. That defendant herein has failed and refused to pay this sum or any part thereof. Wherefore, judgment was prayed for in the above amount, to be paid in due course of administration.

## II

Defendant herein filed a demurrer to said Complaint on [fol. 20] the grounds that the Complaint failed to state a cause of action in that said Complaint did not allege that the incompetent had no estate out of which the claim of plaintiff could be satisfied. Thereafter a hearing was held on said demurrer and said demurrer was overruled on or about June 12, 1961, by the Honorable Edward F. O'Day, Judge of the Superior Court. Thereafter an Answer was filed and said Answer is the subject of this Motion for Judgment on the Pleadings on the ground that it fails to present any defense to the cause of action.

## III

The Answer Raises Only Questions of Law; All Issues of Fact Are Admitted by Failure to Deny.

(A) The Answer to the Complaint herein denies paragraph II of said Complaint only insofar as it alleges that

Ellinor Greene Vance, deceased, was legally responsible for the support, care, maintenance and medical attention furnished to Auguste Schaeche at Agnews State Hospital; said Answer denies paragraph VIII of said Complaint insofar as it alleges that defendant is indebted to plaintiff in the amount of \$7,554.22. It is clear that these denials are not denials of facts, but are only conclusions of law which must depend for their correctness upon the sufficiency of the facts alleged in the Complaint. It should be noted that Judge O'Day has already ruled once upon the sufficiency of said Complaint.

(B) The first affirmative defense merely restates the contention urged in the demurrer to the said Complaint; that [fol. 21] is, that there is a guardianship estate for this patient from whom reimbursement may be sought by plaintiff herein. For the purposes of this motion plaintiff admits the facts alleged in the first four paragraphs of said affirmative defense. Paragraph V of said defense merely states a legal conclusion that the above facts estop plaintiff from asserting its claim against defendant. It is the purpose of this motion to test the correctness of that conclusion.

(C) The second affirmative defense depends for its sufficiency on the legal conclusion that plaintiff's rights are fully determined and adjudicated by the fact that there is an equitable lien upon the guardianship assets of the estate of Auguste Schaeche securing the claim of the Department of Mental Hygiene for part of the sums expended for the support of said patient, said equitable lien being granted by the Superior Court of San Francisco on October 23, 1958.

Plaintiff will now proceed to demonstrate why none of the above conclusions of law present a defense to plaintiff's cause of action, and therefore, why this court should grant plaintiff's Motion for Judgment on the Pleadings, in favor of plaintiff and against defendant.



## IV

The Answer and Affirmative Defenses Present No Defense to Plaintiff's Cause of Action.

(A) A Daughter's Estate Is Clearly Liable for the Support of a Mother in a State Mental Institution.

[fol. 22] Section 6650 of the Welfare and Institutions Code provides in part:

"The husband, wife, father, mother or *children* of a mentally ill person or inebriate, the *estates* of such persons, and the *guardian and administrator of the estate* of such mentally ill person or inebriate *shall* cause him to be properly and suitable cared for and maintained, . . . (and) *shall be liable* for his care, support and maintenance in a state institution of which he is an inmate. The liability of such person and estates shall be a joint and several liability . . ." (Emphasis added.)

The liability of the estate of a daughter is clear from the plain words of the statute. This issue is also completely disposed of by the recent decision of the California Supreme Court in *Department of Mental Hygiene v. McGilvery*, 50 Cal. 2d 742 (1958). The court held that section 6650 of the Welfare and Institutions Code made the relatives named therein unequivocally liable for the support and care of the mentally ill person. See also, *Department of Mental Hygiene v. Rosse*, 187 A.C.A. 324 (1960); *Department of Mental Hygiene v. Shane*, 142 Cal. App.2d Supp. 881 (1956).

Therefore, not only is it plain that the estate of a daughter of a mentally ill person is liable for her mother's care, but it follows from this and from the facts admitted by the Answer's failure to deny, that plaintiff is entitled to a judgment in the amount of \$7554.22.

[fol. 23] (B) It Is Immaterial That the Guardianship Estate of the Patient Represents an Additional Joint and Several Obligor Against Whom Plaintiff Could Proceed.

The first affirmative defense merely restates the contention unsuccessfully urged in the demurrer to the Complaint on file herein; that is, that there is a guardianship estate

for this patient from which reimbursement could be sought by plaintiff herein.

That section 6650 (quoted supra) makes the estate of the patient liable for her care is conceded. However, the same code section states that the obligation is a joint and several one. The consequence of a joint and several obligation is that the plaintiff may select from among the obligors the one from whom he seeks reimbursement. The provisions of section 383 of the Code of Civil Procedure apply in such a situation (*Moreing v. Weaver*, 3 Cal. App. 14, 22). That section provides: "Persons severally liable on the same obligation . . . may all or *any of them* be included in the same action *at the option of the plaintiff*." (Emphasis added.) Thus, it is legally immaterial that plaintiff could proceed against the estate of the patient instead of against the estate of the decedent daughter of said patient.

Defendant attempts to find an estoppel against plaintiff in her first affirmative defense. Such estoppel is said to be based on the fact that Evelyn Kirchner, who happens to be both the guardian of the estate of the incompetent herein, [fol. 24] and at the same time administratrix for the decedent's estate, (defendant in this action) did attempt to make payment for the care of this patient *out of the guardianship estate*. Of course if full payment were made, this would preclude suit against the decedent's estate by plaintiff for the cost of past care. It should be noted that there is an obvious conflict of interest between Evelyn Kirchner's status as guardian of the estate of this incompetent and her capacity as administratrix of the estate of the patient's daughter. It would seem that her duty as the guardian of the estate to manage the estate frugally and to pay the cost for support of the ward only when necessary (Prob. Code #1502) would make it a violation of her duty to pay a debt to a creditor when the creditor is willing to look to a different joint and several obligor for payment. Her position as administratrix is an interest adverse to the faithful performance of her duties as guardian (Prob. Code #1580(5)).

The full significance of this conflict of interest and the resulting prejudice to the ward is evident if the court takes judicial notice of the probate file of the decedent's estate

herein (SF Probate 154752). Except for a small bequest of \$100, Evelyn Kirchner is the sole legatee under the will admitted to probate therein. Therefore, to the extent she uses her status as guardian to pay the cost of care for the ward out of the guardianship estate, she will inherit directly from the decedent's estate of which she is both administratrix and principal legatee.

[fol. 25] It should be noted that payments by the guardian of a ward are strictly regulated not only by the Probate Code, but also by the Welfare and Institutions Code, if the ward is a patient in a state mental hospital. Section 6655 sets up specific conditions precedent to any payment for the care of a person at a state mental hospital out of the guardianship estate. Section 6655 provides in part:

"Payment for the care, support, maintenance, and expenses of a person at a state hospital *shall not be exacted*, however, if there is a likelihood of the patient's recovery or release from the hospital and payment will reduce his estate to such an extent he is likely to become a burden on the community in the event of his discharge from the hospital." (Emphasis added.)

It is a guardian's duty to manage an estate frugally. This requires that she make no disbursements that she isn't required to make. She isn't required to pay for the care of the ward if there is a likelihood of the ward's recovery or release and the estate is small. Thus, it is the guardian's duty not to make payments from the ward's estate until she has determined the presence or absence of this condition. This she has failed to do or to allege having done. Thus, her affirmative defense is defective.

It has already been noted that it is a duty of "every guardian of an estate (to) manage it frugally and without waste, and apply the income, as far as may be *necessary*, [fol. 26] to the comfortable and suitable support . . . of the ward . . ." (Prob. Code #1502). (Emphasis added.) This is clearly a direction to the guardian to preserve the estate of the patient as long as possible. When the guardian fails to preserve the estate of the patient, the Department of Mental Hygiene has a right and duty to do so. *Guardianship of Thrasher*, 105 Cal. App.2d 768 (1951). In the *Thrasher* case the court explained with clarity the

propriety and the duty of the Department of Mental Hygiene to proceed against other joint and several obligors before exhausting the estate of a patient. The court relied on section 6655 (105 Cal. App.2d at 776-7) in holding that the Department of Mental Hygiene could exact payment from the husband on his liability under 6650 and postpone reimbursement from the patient's estate. In *Thrasher*, the guardianship estate would have lasted eight years if the cost of the patient's care were exacted from her estate. Defendant states that there is \$10,903.35 in the guardianship estate (Answer 3:10). By defendant's allegation, the lien granted was for \$6425.00 accrued as of September 30, 1958, plus all amounts accruing since this date. (Answer: 2:25-28, Order attached to Answer.) Using for computation the monthly rates alleged in the Complaint (admitted by defendant's failure to deny), the amount due for the ward's care is far in excess of the total assets of the guardianship estate. If defendant is correct in asserting that the Department must accept payment when offered or be estopped to collect from another obligor, then it is clear that the guardianship estate (\$10,903.35) will be completely [fol. 27] exhausted and the patient will be left as a public charge.

(C) An Equitable Lien Against the Guardianship Estate Is Not a Bar to an Action Against Another Joint and Several Obligor, and Therefore Presents No Defense to This Action.

Defendant's second affirmative defense states that because plaintiff has an equitable lien against the guardianship estate, its rights are "fully adjudicated and determined." This is not the law of California. This equitable lien is merely a conditional security interest. Unlike a judgment, it is subject to expenditures from the guardianship estate on behalf of the ward. If the patient were discharged from the state institution she would be entitled to live off that money even though this might destroy plaintiff's lien.

But even if this equitable lien could be compared to a judgment this fact would not present a defense to the action. It is well settled that a judgment against one joint and several obligor is not a bar to a suit against any other

joint and several obligor. (*Williams v. Reed*, 113 Cal. App.2d 195 (1952).)

In *Williams*, plaintiff had a judgment against one co-maker of a note. The other co-makers claimed this was a bar to an action against them. The court stated the case thus:

"Reed's comakers claim that in such a case the bringing of an action against one of the makers (Reed) without joining the others, and obtaining judgment against him alone, bars the plaintiff from later suing any of [fol. 28] the others in respect to that obligation. . . . It is true in most jurisdictions, including California, that joint obligors upon the same contract are indispensable parties. They may not be sued separately (Citation). If judgment is obtained in a separate action against one, it bars an action against the others (Citation). When the obligation is joint and several it is not non-joinder to sue one alone (Citation). The same is true of an action against one or more and less than all of a number of persons jointly and severally obligated as tortfeasors. In such a case the judgment obtained against one is not a bar to an action against the remaining joint and several obligors. . . . (Citation) That being so in respect to joint and several tort obligors, the same should be true of joint and several obligors under a contract. That seems to be the general rule. (39 Am. Jur. 908, Parties, #39, note 1; 4 Corbin on Contracts, 1951, 774-775, #937, note 35.)" 113 Cal. App.2d at 203-4. See also, *Williams v. Reed*, 48 Cal.2d 57 at 64 (1957), the same case on a later appeal.

In summary, the fact that the plaintiff has a secured interest (the equitable lien) in the guardianship estate could not affect his right to proceed against another joint and several obligor. Therefore, defendant's second defense concerns a wholly immaterial matter and is not a defense to the cause of action stated by plaintiff.

Plaintiff hereby requests that the answer of defendant be stricken and that the motion of plaintiff for a Judgment



on the Pleadings be granted upon the record now on file, the pleadings, and these points and authorities in support of said motion.

Respectfully submitted,

Stanley Mosk, Attorney General of the State of California; John Carl Porter, Deputy Attorney General, Attorneys for Department of Mental Hygiene of the State of California.

[File endorsement omitted]

[fol. 30]

IN: THE SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

NOTICE OF MOTION FOR JUDGMENT ON THE PLEADINGS—  
Filed November 7, 1961

To the Defendant Above Named and Alan A. Dougherty,  
Her Attorney of Record Herein:

You and Each of You Will Please Take Notice that on the 27th day of November, 1961, at 10:00 A.M. of said day, or as soon thereafter as counsel can be heard, at the courtroom of the above-entitled court in the City and County of San Francisco, State of California, the above-named plaintiff will move the court for an order of Judgment on the Pleadings in favor of the plaintiff and against defendant on the ground that there is no defense to the action.

Said motion will be made upon the ground that the Answer on file herein fails to state facts sufficient to constitute a defense to the cause of action, or any portion thereof, stated in the Complaint.

Said motion is made and based upon this notice, upon the pleadings, papers, records and files in this action and upon the plaintiff's Memorandum of Points and Authorities served herewith.

Dated: November 3, 1961.

Stanley Mosk, Attorney General of the State of California; John Carl Porter, Deputy Attorney General, Attorneys for Department of Mental Hygiene of the State of California.

[fol. 31] Affidavit of Service by Mail (omitted in printing).

[fol. 32] [File endorsement omitted]

[fol. 33]

IN THE SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

NOTICE OF MOTION FOR JUDGMENT ON THE PLEADINGS—  
Filed November 16, 1961

To the Plaintiff Above Named and Stanley Mosk, Attorney  
General of the State of California:

You and Each of You Will Please Take Notice that on the 27th day of November, 1961, at 10:00 A. M. of said day, or as soon thereafter as counsel can be heard, at the courtroom of the above entitled court in the City and County of San Francisco, State of California, the above named defendant will move the court for its order giving defendant judgment on the pleadings in accordance with the prayer of her answer on file herein.

Said motion will be made upon the ground that the Complaint on file herein fails to state facts sufficient to constitute a cause of action against defendant.

Said motion will be based upon this notice, upon the pleadings, papers, records and files in this action and upon defendant's memorandum of points and authorities served herewith.

Dated: November 15, 1961.

Dinkelspiel & Dinkelspiel, By Alan A. Dougherty,  
Attorneys for defendant.

Memorandum of Points and Authorities

Welf. & Inst. C. 6650 provides in part as follows:

" \* \* \* The husband, wife, father, mother or children [fol. 34] of a mentally ill person or inebriate, and the administrators of their estates, and the estates of such mentally ill person or inebriate, shall be liable for his care, support, and maintenance in a state institution of which he is an inmate. The liability of such persons and estates shall be a joint and several liability, and such liability shall exist whether the mentally ill per-

son or inebriate has become an inmate of a state institution pursuant to the provisions of this Code or pursuant to the provisions of sections \* \* \* .”

Apparently, plaintiff relies on this section as the basis of its claim set forth in the complaint on file herein.

Welf. & Inst. C. 6650 was interpreted by the court in the Guardianship of Thrasher (1951) 105 C.A.2d 768 in which the court held that a husband was liable to the Department of Mental Hygiene under similar circumstances even though the wife had a separate estate or other means out of which the claim of the State Department could have been paid. The Court followed the reasoning set forth in the case of Meyer's Estate, Myrick, Probate Court Report 178 where the court says:

“It is the duty of the husband to maintain the wife, whether she be sane or insane; and while he has the ability so to do, resort cannot be had to her estate.”

[fol. 35] In the Thrasher case the court looked to all statutory provisions covering the relationship of husband to wife and his liability therefor and found that there is a primary liability on the part of a husband to support the wife and that the obligation does not cease when the wife is adjudged insane.

In the case before this court the defendant is the estate of a deceased adult daughter; there never was any primary responsibility on the part of the adult daughter to support the mother. To the contrary, there never was a duty of any kind on the deceased daughter to support the mother. C.C. 206 reads in part as follows:

“It is the duty of the father, the mother, and the children of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability \* \* \* .”

As stated in the case of Guardianship of Thrasher (Supra) the court says:

\* \* \* All of the statutory provisions in all of the codes must be read together and harmonized if pos-

sible. . . . It is a well recognized rule that for purposes of statutory construction the codes are to be regarded as blending into each other and constituting but a single statute."

Therefore, Welf. & Inst. C. 6650 must be read together with C.C. 206.

Further, Welf. & Inst. C. 6650 must be read together [fol. 36] with Welf. & Inst. C. 6655 which reads in part as follows:

"If any person committed to a state mental hospital has sufficient estate for the purpose, the guardian of his estate shall pay for his care, support, maintenance and necessary expenses at the mental hospital to the extent of the estate."

Dinkelspiel & Dinkelspiel, By Alan A. Dougherty,  
Attorneys for Defendant.

(Proof of Service by Mail Attached)

[File endorsement omitted]

[fol. 37]

IN THE SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

MINUTE ORDER—November 27, 1961

Vol. 655, Page 224

The Court ordered motion for Judgment on the pleadings submitted.

IN THE SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

MINUTE ORDER—December 1, 1961

Vol. 655, Page 232

Heretofore submitted, Plaintiff's motion for summary judgment granted; Defendant's motion for summary judgment denied.

[fol. 38]

IN THE SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

JUDGMENT—Entered December 15, 1961

Plaintiff having made a motion before this Court for a judgment on the pleadings in favor of plaintiff, defendant having also moved for a judgment on the pleadings in favor of defendant, and the matter having been duly argued and submitted to the Court with Points and Authorities by both parties; Stanley Mosk, Attorney General of the State of California, by John Carl Porter, Deputy Attorney General, appearing for the plaintiff, and Alan A. Dougherty appearing for defendant, and the Court being fully advised in the premises, did, on December 1, 1961, grant the motion of plaintiff for judgment on the pleadings and denied defendant's motion.

Now Therefore, It Is Hereby Ordered, Adjudged and Decreed that plaintiff have judgment against defendant in the sum of \$7,554.22;

It Is Hereby Further Ordered, Adjudged and Decreed that plaintiff have judgment against the defendant for the costs of suit incurred herein in the sum of \$10.55.

Dated: December 13, 1961

Byron Arnold, Judge of the Superior Court.

Judgment entered

Date: December 15, 1961.

Volume A 37, Page 6.

H. Vanella, Deputy.

[fol. 39]

[File endorsement omitted]

[fol. 40]

## IN THE SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

NOTICE OF ENTRY OF JUDGMENT—Filed December 20, 1961

To the Above Named Defendant and to Her Attorney, Alan A. Dougherty, Esquire:

You and Each of You Will Please Take Notice that Judgment was entered in the above entitled action in favor of plaintiff and against defendant, on December 15, 1961, in the Superior Court, in and for the City and County of San Francisco, State of California; said Judgment being recorded in Volume A37, Page 6.

Dated: December 20, 1961.

Stanley Mosk, Attorney General of the State of California; John Carl Porter, Deputy Attorney General, Attorneys for Plaintiff.

Affidavit of Service by Mail (omitted in printing).

[fol. 41] [File endorsement omitted]

[fol. 42]

## IN THE SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

NOTICE OF APPEAL AND NOTICE AND REQUEST FOR  
CLERK'S TRANSCRIPT—Filed December 29, 1961

To the Honorable Byron Arnold, Judge of Said Superior Court, and Stanley Mosk, Attorney General of the State of California, Attorney for Plaintiff:

You, and Each of You, Will Please Take Notice that the defendant in the above entitled action hereby appeals to the District Court of Appeal, First Appellate District, of the State of California, from the judgment in said action rendered in favor of the plaintiff and against the defendant and entered on the 15th day of December, 1961 in Judgment Book A37, Page 6, of the records of the Superior Court of the State of California in and for the City and



County of San Francisco, and from the whole of said judgment.

You will please take further notice that defendant hereby requests that a clerk's transcript be prepared, and that the following papers and records on file or lodged with the clerk be incorporated in the record on appeal, to wit:

1. Complaint for Money Due.
2. Demurrer to Complaint and Memorandum of Points and Authorities.
3. Copy of Minute Order Overruling Demurrer.
4. Notice of Overruling Demurrer.
5. Answer to Complaint.
6. Notice of Motion for Judgment on the Pleadings.
- [fol. 43] 7. Plaintiff's Memorandum of Points and Authorities in Support of Motion for Judgment on the Pleadings.
8. Copy of Minute Order Granting Motion for Judgment on the Pleadings.
9. Judgment.
10. Notice of Entry of Judgment.
11. This notice of appeal and notice and request for clerk's transcript.

Dated: December 27, 1961.

Dinkelspiel & Dinkelspiel, By Alan A. Dougherty,  
Attorneys for Defendant.

(Proof of Service by Mail Attached)

[File endorsement omitted]

[fol. 44] Clerk's Certificate to foregoing transcript  
(omitted in printing).

[fol. 45]

IN THE DISTRICT COURT OF APPEAL

STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

Division One

1 Civil No. 20,576

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DEPARTMENT OF MENTAL HYGIENE OF THE STATE  
OF CALIFORNIA, Plaintiff and Respondent,

vs.

EVELYN KIRCHNER, Administratrix of the Estate of  
ELLINOR GREEN VANCE, Defendant and Appellant.

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OPINION—Filed March 15, 1963

Defendant Evelyn Kirchner, administratrix of the estate of Ellinor Green Vance, appeals from a judgment on the pleadings entered against her and in favor of the plaintiff Department of Mental Hygiene of the State of California for the sum of \$7,554.22 and costs for the care, support, maintenance, and medical attention of Auguste Schaeche, mother of defendant's intestate, in a state institution for the mentally ill.

[fol. 46] Plaintiff's complaint filed April 19, 1961, alleges in substance: That on January 15, 1953, Mrs. Schaeche was duly adjudged mentally ill and committed to Agnews State Hospital where ever since said date she has been, and now is, a patient; that Ellinor Vance was Mrs. Schaeche's daughter and as such responsible for her care and maintenance at the above hospital; that pursuant to section 6651 of the Welfare and Institutions Code, the director of mental hygiene determined the rate for the care and maintenance of Mrs. Schaeche and said charges were made continuously for every month said incompetent was a patient; that for the period August 25, 1956, through August 24, 1960, there became due and owing the plaintiff department for the care and maintenance of said incom-

petent the sum of \$7,554.22, no part of which has been paid; that the daughter died on August 25, 1960, and the defendant is the duly appointed, qualified and acting administratrix of her estate; that on November 3, 1960, the plaintiff filed in the daughter's estate, its creditor's claim for \$7,554.22 for the care and maintenance for the above period of time, which claim was rejected by the defendant administratrix on January 25, 1961; and that the above amount of \$7,554.22 is due, owing and unpaid.

Defendant's answer directly controverts only two paragraphs of the complaint: that alleging the daughter's legal responsibility for the care and attention furnished the mother at Agnews State Hospital and the final paragraph alleging the outstanding indebtedness from the daughter's [fol. 47] administratrix, defendant herein. In the answer, therefore, defendant denies that the decedent was legally responsible for such care and maintenance and denies that she, as administratrix, is indebted to the plaintiff in any amount. Defendant by failure to deny them admits the remaining allegations of the complaint.<sup>1</sup> However the answer also sets forth two further and separate defenses in substance as follows: That on October 9, 1956, Ellinor Vance was appointed and qualified as the guardian of the estate of Auguste Schaeche, an incompetent person; that on October 23, 1956, on petition of the plaintiff department filed in such guardianship proceeding, the court made its order giving the department an equitable lien on the estate of the incompetent for \$6,425 for accrued charges for care, maintenance and medical attention for the period ending September 30, 1958, and for such other sums as may become due in the future; that after the death of Ellinor Vance on August 25, 1960, and on January 16, 1961, the defendant Evelyn Kirchner was appointed guardian of the estate of Auguste Schaeche; that said defendant as such guardian thereafter sold certain real property of the guardianship

<sup>1</sup> It should be noted therefore that the defendant admits the allegations that the director of mental hygiene determined the rate and made continuous monthly charges for the care and maintenance of the incompetent, that for the period involved a total of \$7,554.22 became due and owing to the department, and that no part of said sum was paid.

estate for the net amount of \$10,903.35, which amount is on deposit at a local title company; that defendant as guardian of the estate of said incompetent<sup>2</sup> requested of the plaintiff department an itemized statement of the amount due for the care and maintenance of the incompetent so that such amount could be presented to the court and paid, but that the plaintiff refused and continues to refuse to render such statement; that because of such refusal "plaintiff should be estopped" from asserting its claim against the estate of Ellinor Vance; that, additionally, the plaintiff's rights have been adjudicated by the order made in the guardianship proceeding on October 23, 1958.

Plaintiff moved for judgment on the pleadings on the ground that there was no defense to its action. Defendant filed a similar motion on the ground that the complaint failed to state facts sufficient to constitute a cause of action against the defendant. The court below granted plaintiff's motion and denied defendant's motion. This appeal followed.

"The plaintiff, by his motion for judgment on the pleadings, may recover judgment without the introduction of any evidence if his complaint states facts sufficient to constitute a cause of action, and if the answer . . . neither raises any material issue nor states a defense—that is, where the answer expressly or substantially admits or does not sufficiently deny all the material allegations of the complaint, and sets up no new matter sufficient to bar [fol. 49] or defeat the action." (39 Cal.Jur.2d, Pleading, § 307, pp. 420-421; see *Adjustment Corp. v. Hollywood Hardware etc. Co.* (1939) 35 Cal.App.2d 566, 569-570 [96 P.2d 161].) On such a motion the allegations of the answer must be taken as true and the plaintiff admits, for the purpose of the motion, the untruth of his own allegations, so far as they have been controverted by the answer. (*Osborne v. Abels* (1939) 30 Cal.App.2d 729, 731 [87 P.2d 404].)

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<sup>2</sup> It should be noted that after January 16, 1961, Evelyn Kirchner defendant herein was not only administratrix of the estate of the daughter (Ellinor Vance) but also guardian of the estate of the mother (Auguste Schaeche).

The material allegations of the complaint before us not controverted by the defendant establish that the incompetent Auguste Schaeche was a patient at Agnews State Hospital and that charges for her care and maintenance, at rates determined according to statute, are owing and unpaid to the department in the total amount of \$7,554.22. Briefly summarized, the answer simply denies that the daughter of the incompetent was legally responsible for such indebtedness and further denies the allegation (conclusionary in form) that such amount is due, owing and unpaid from the daughter's administratrix. The answer in addition asserts that the daughter was an adult and that the mother's own guardianship estate had adequate funds to pay the indebtedness, which funds were themselves secured to plaintiff by an equitable lien. Thus the answer raises no factual issues requiring a trial but merely the legal claim of the defendant that the decedent daughter was not liable for the above charges. Plaintiff's motion for a judgment on the pleadings was therefore an appropriate remedy to determine the basic controversy. (See *Bank of [fol. 50] America v. Hirsch Mercantile Co.* (1944) 64 Cal.App.2d 175, 176, 181 [148 P.2d 110].)

Defendant contends here that (1) the estate of an adult child is not liable to the Department of Mental Hygiene for the care and maintenance of an incompetent mother in a state institution where the mother has adequate funds of her own to pay the charges therefor; and (2) the department was required to proceed against the mother's property on which it had an equitable lien. Neither contention has merit.

Section 6650 of the Welfare and Institutions Code,<sup>3</sup> in effect during the four-year period here involved, provides in relevant part: "The husband, wife, father, mother, or children of a mentally ill person or inebriate, the estates of such persons, and the guardian and administrator of the estate of such mentally ill person or inebriate, shall cause him to be properly and suitably cared for and maintained, . . . The husband, wife, father, mother, or children

<sup>3</sup> Unless otherwise indicated, all code references hereafter are to the Welfare and Institutions Code.

*of a mentally ill person or inebriate, and the administrators of their estates, and the estate of such mentally ill person or inebriate, shall be liable for his care, support, and maintenance in a state institution of which he is an inmate. The liability of such persons and estates shall be a joint and several liability, . . .*" (Italics added.)

The above statute imposes on the persons therein named an unconditional liability for the support and maintenance of a mentally ill relative in a state institution. (*Department of Mental Hygiene v. McGilvery* (1958) 50 Cal.2d 742, 749-751 [329 P.2d 689]; *Department of Mental Hygiene v. Rosse* (1960) 187 Cal.App.2d 283, 286 [9 Cal.Rptr. 589]; *Department of Mental Hygiene v. Shane* (1956) 142 Cal.App.2d Supp. 881, 883 [299 P.2d 747].) It is clear that it imposes such liability on a daughter of a mentally ill person and on such daughter's estate.

Defendant argues that Ellinor Vance, being an adult daughter, had no "primary duty" to support her mother, Mrs. Schaeche, and that if any liability is to be imposed on the daughter or the daughter's estate, "it must be shown that not only the mother had no funds but that the daughter had the ability to pay."

The liability created by section 6650 is unconditionally imposed and not dependent on ability to pay. (*Department of Mental Hygiene v. McGilvery, supra*, 50 Cal.2d 742, 749-751; *Department of Mental Hygiene v. Mannina* (1959) 168 Cal.App.2d 215, 217 [335 P.2d 694, 337 P.2d 219].) Nor is it made dependent upon the existence of a "primary duty" to furnish support. The above statute makes no mention of such expression. It clearly imposes liability, as defendant concedes, on the estate of the mentally ill person. It also expressly provides that the liability of the persons and estates named in the statute "shall be

\* It has recently been held in *Department of Mental Hygiene v. Hawley* (1963) \*59 Cal.2d \_\_\_\_ [\_\_\_\_ Cal.Rptr. \_\_\_\_, \_\_\_\_ P.2d \_\_\_\_] that the liability imposed by section 6650 does not extend to the costs of support and maintenance of a person charged with crime who at the time of trial has been determined to be insane and, trial being postponed, is detained in a state institution pending his recovery.

\* Advance Report Citation: 59 A.C. 259.



a joint and several liability." The law is settled that where an obligation is joint and several, any or all of the persons obligated may be compelled to pay the indebtedness. A person thus liable may be sued alone without joining any others also liable. In the case at bench, therefore, it was permissible for the Department of Mental Hygiene to enforce the statutory liability against the daughter of the mentally ill person without proceeding against the mentally ill person herself. (*Moreing v. Weber* (1906), 3 Cal.App. 14, 21-22 [84 P. 220]; *McClintick v. Frame* (1929) 98 Cal.App. 338, 343 [276 P. 1033]; Code Civ. Proc., § 383.)

Defendant relies on *Guardianship of Thrasher* (1951) 105 Cal.App.2d 768 [234 P.2d 230] and *Department of Mental Hygiene v. Black* (1961) 198 Cal.App.2d 627 [18 Cal.Rptr. 78]. She claims that these cases establish that, where a person has a "primary obligation" to support an incompetent, such person becomes liable under section 6650 regardless of the ability of the estate of the incompetent to pay. However, defendant argues, since an adult daughter has no such primary duty to support an incompetent mother who has an adequate estate, no liability arises under the statute. As we have pointed out, such a conclusion is untenable in the light of the clear provisions of the statute and the decisions interpreting it. Nor are the above two cases cited by defendant in conflict with what we have said. In *Thrasher, supra*, the court in effect held [fol. 53] that it was error for the probate court to permit a husband who was guardian of his incompetent wife to reimburse himself from the wife's estate for amounts paid by him to the Department of Mental Hygiene for support and maintenance of the wife at a state hospital. The department had objected to the settlement of the accounts on the ground that the wife's support was the personal liability of the husband. On appeal the department contended that such liability rested on two separate bases: (a) the fact that the husband was primarily responsible for the support of his wife; and (b) the fact that he had a statutory liability under section 6650 for her support in a state hospital for the mentally ill. The court gave recognition to both obligations and harmonizing all of

the applicable statutes held that the husband being primarily liable for the wife's maintenance could not draw upon her estate for it. However the court did not hold, as defendant here argues, that the husband's liability on the second basis, that is under section 6650, arose *only because* of his liability on the first basis, that is, because of his "primary duty" as a husband to support his wife. In *Black, supra*, it was held that the Department of Mental Hygiene could recover from the estate of the mother of a mentally ill person the cost of the latter's support in a state hospital. The court stated: "The incompetent's mother being a person liable for her maintenance and care (Welf. & Inst. Code, § 6650), there is thus no merit to the first of appellant's contentions that the personal assets of the incompetent patient must first be exhausted [fol. 54] before liability is imposed on responsible relatives." (198 Cal.App.2d at p. 632.) It is clear that the court held the statute imposed liability *ex proprio vigore* and not because of any independent "primary duty" on the part of the mother to support her daughter. Neither *Thrasher* nor *Black*, therefore, restrict or qualify the express declaration of joint and several liability found in section 6650.

Nor is either of the above cases authority for the proposition urged by defendant that the estate of the mentally ill person must first be exhausted before liability under section 6650 can be imposed upon any of the other persons named in the statute. As we have already pointed out, the liability of the persons and estates named in the statute is unconditional and absolute (*Department of Mental Hygiene v. McGilvery, supra*, 50 Cal.2d 742) and "a joint and several liability" (§ 6650). It is therefore unimportant that the estate of the mentally ill person can be resorted to and unnecessary that such action first be taken. The contention here made by defendant that the assets of the incompetent must be first exhausted was flatly rejected, as noted above, in *Department of Mental Hygiene v. Black, supra*, 198 Cal.App.2d 627, 632.

We observe that such was not always the law. After the 1941 amendment of section 6650 (Stats. 1941, ch. 916, § 1, p. 2503) that portion of the statute pertinent here read

substantially as it now reads except that it then provided: "The liability of such persons and estates shall be a joint and several liability *except that where the insane person [fol. 55] or inebriate has an estate such estate shall be exhausted before liability passes to the relatives.*" (Italics added.) The 1943 amendment to the statute (Stats. 1943, ch. 1052, § 1, p. 2991) omitted the above italicized language. As was stated in *People v. Valentine* (1946) 28 Cal.2d 121, 142 [169 P.2d 1]: "It is ordinarily to be presumed that the Legislature by deleting an express provision of a statute intended a substantial change in the law. [Citation.] It has been repeatedly declared that where changes have been introduced by amendment it is not to be assumed that they were without design and, further, that by substantially amending a statute the Legislature demonstrates an intent to change the pre-existing law."

Defendant's final claim, made without analysis or citation of authority, that the instant judgment constitutes the taking of her property without due process and a denial of the equal protection of the laws need not detain us. Such claims were raised and set at rest in *Department of Mental Hygiene v. McGilvery, supra*, 50 Cal.2d 742, 754-761.

We turn to the defendant's second contention on appeal. She argues: The plaintiff petitioned for and secured in the guardianship proceedings of Mrs. Schaeche an equitable lien on the estate of the incompetent for accrued charges in the sum of \$6,425 and also for future charges. Since this lien is still in effect, the plaintiff Department of Mental Hygiene must proceed against such security in accordance with the "one form of action" rule prescribed by [fol. 56] section 726 of the Code of Civil Procedure and therefore is precluded from proceeding against another liable on the obligation, namely this defendant. We find no merit in the above argument.

To support her position, the defendant is content to assert that the equitable lien here involved is the same security as a mortgage citing *Estate of Moore* (1955) 135 Cal.App.2d 122, 131 [286 P.2d 939], in which the court quoted from *Childs etc. Co. v. Shelburne Realty Co.* (1943) 23 Cal.2d 263, 268 [143 P.2d 697]: "a mortgagee also has

a security interest in the nature of an equitable lien." We are not favored with any further analysis of the legal equation which defendant thus proposes. Nor does defendant cite us to any authority holding that an equitable lien of the kind presented here falls within the pertinent statute.

Plaintiff claims that the instant equitable lien resembles more a judgment lien than a mortgage, since both the equitable lien and the judgment lien are non-consensual and are designed to expand the creditor's remedies rather than to contract them as does section 726 of the Code of Civil Procedure. Plaintiff also points out: Code of Civil Procedure section 726 does not encompass all liens but by its terms prescribes the "one form of action" rule for the recovery of a debt or enforcement of a right "secured by mortgage upon real or personal property." (Italics added.) It later encompassed trust deeds as a result of the decision in *Bank of Italy etc. Assn. v. Bentley* (1933) 217 Cal. 644 [20 P.2d 940]. It has been held not to apply to a vendor's lien (*Jones v. Evans* (1907) 6 Cal.App. 88 [fol. 57]. [91 P. 532]), to a judgment lien (*Lisenbee v. Lisenbee* (1919) 42 Cal.App. 567 [183 P. 862]) or to a mechanic's lien (*Martin v. Becker* (1915) 169 Cal. 301 [146 P. 665, Ann.Cas. 1916D 171]), the creditor not being required in any of such instances to first exhaust his security. We think plaintiff's analysis of the nature of the equitable lien before us, made in the light of the above precedents, is sound. Neither of the parties has referred us to, nor has our own research disclosed, any case holding that such lien falls within the purview of the statute. In view of the above authorities, we are of the opinion that it does not.

However, even if we assume, *arguendo*, that the instant lien falls within the statute in question, we fail to see how this would give support to the position defendant takes. It is well settled that section 726 of the Code of Civil Procedure is for the protection of the mortgagor and that the liability of persons independently obligated to pay the same debt may be enforced without first resorting to the mortgage security. (*Leob v. Christie* (1936) 6 Cal.2d 416, 418 [57 P.2d 1301] and cases there cited:

*Stephenson v. Lawn* (1957) 155 Cal.App.2d 669, 671 [318 P.2d 132].) *Appel v. Hubbard* (1957) 155 Cal.App.2d 639 [318 P.2d 164] cited by defendant is not in conflict with the foregoing rule. The only person coming within the protective provisions of the statute is the mortgagor or, as the *Stephenson* case uses the term, the principal debtor, which corresponds here to the owner of the lien property, [fol. 58] the incompetent Auguste Schaeche. The instant action is not against Mrs. Schaeche.

The judgment is affirmed.

Sullivan, J.

Bray, P. J., and Molinari, J., concurred.

[File endorsement omitted]

[fol. 59]

[File endorsement omitted]

[fol. 60]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

S.F. 21349

DEPARTMENT OF MENTAL HYGIENE OF THE STATE  
OF CALIFORNIA, Plaintiff and Respondent,

vs.

EVELYN KIRCHNER, Administratrix of the Estate of  
ELLINOR GREEN VANCE, Defendant and Appellant.

APPELLANT'S PETITION FOR A HEARING BY THE  
SUPREME COURT—Filed April 24, 1963

After Decision by the District Court of Appeal, State of California, First Appellate District, Division One, and Numbered Therein 1 Civil No. 20,576.

City and County of San Francisco, Honorable Byron Arnold, Judge.

*To the Honorable Phil S. Gibson, Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the State of California:*

Defendant and appellant, Evelyn Kirchner, Administratrix of the Estate of Ellinor Green Vance, hereby petitions for a hearing of the above cause after decision by the District Court of Appeal, First Appellate District, Division One.

[fol. 61]

## I.

### Statement of Case

The defendant is the Administratrix of the Estate of Ellinor Green Vance, who was the adult daughter of Auguste Schaeche, an incompetent and a patient at Agnews State Hospital. Defendant appealed from a judgment on the pleadings against her and in favor of plaintiff for the sum of Seven Thousand Five Hundred Fifty-Four Dollars Twenty-Two Cents (\$7,554.22) for the care of the incompetent mother even though the mother had an estate of her own in the amount of Ten Thousand Nine Hundred Three Dollars Thirty-Five Cents (\$10,903.35). The District Court of Appeal, First Appellate District, Division One, in an opinion filed March 15, 1963, affirmed the judgment of the Superior Court (a copy of the decision is annexed to this petition as Appendix A).

## II.

### Grounds for Hearing

Defendant submits that a hearing in this case is necessary to settle the following questions of law and to secure uniformity of decision relating thereto:

(a) Does Welf.C. 6650 impose an unconditional and absolute liability upon an adult child, or her estate, for the care of an incompetent mother by the Department of Mental Hygiene where the mother has adequate funds of her own to pay the charges therefor?

[fol. 62] (b) If the answer thereto is in the affirmative would a judgment under such a statute constitute the tak-



ing of defendant's property without due process and a denial of the equal protection of the law!

### III.

#### Statement of Facts

The Department of Mental Hygiene brought this action against the Estate of Ellinor Green Vance, a deceased adult daughter of Auguste Schaeche, a patient at Agnews State Hospital (CT 3:7-17). The purpose of the suit was to obtain reimbursement for the care provided Auguste Schaeche from August 25, 1956 to August 24, 1960, or for Seven Thousand Five Hundred Fifty-Four Dollars Twenty-Two Cents (\$7,554.22) (CT 4:8).

Evelyn Kirchner is the duly appointed Administratrix of the Estate of Ellinor Green Vance (CT 4:12-19). She is also the guardian of the Estate of Auguste Schaeche, the incompetent (CT 16:2). It does not appear from the record before the court who are the beneficiaries in the Estate of Ellinor Green Vance, or who may be the heirs of the incompetent. Nor does it appear from the record whether there are others claiming as creditors against the estate of the decedent.

Evelyn Kirchner, as Administratrix of the decedent's estate, on January 25, 1961, rejected the creditor's claim [fol. 63] filed by the Department of Mental Hygiene (CT 5:5), and then in her capacity as the guardian of Auguste Schaeche she offered to pay the claim out of the assets of the incompetent's estate (CT 16:9-15). The Department of Mental Hygiene refused to accept payment from the guardian (CT 16:9-15), and in due course plaintiff brought this action on April 16, 1961.

Defendant demurred to the complaint on the ground that no cause of action was stated in that the complaint did not allege that the incompetent had "no estate out of which the claim of plaintiff . . . [could] be satisfied" (CT 7:8-11).

The demurrer was overruled (CT 11:19), and the defendant answered denying only liability (CT 14) and set up two separate defenses. First, that since plaintiff refused to present a bill for payment when requested by Evelyn Kirchner, acting in her capacity as guardian, that the Department should be estopped from asserting the same

against the estate of the adult daughter (CT 16:17-20). Second, that since the Department had previously on October 23, 1958, obtained an order in the guardianship proceeding giving the Department an equitable lien on the estate of the incompetent for the sum of Six Thousand Four Hundred Twenty-Five Dollars (\$6,425.00) as accrued charges for the period ending September 30, 1958, and for such other sums as may become due the Department for further support of the incompetent (CT 15:11-23) the "rights of plaintiff have been fully adjudicated and determined" (CT 16:26; 17:1).

[fol. 64] Plaintiff and defendant each moved for a judgment on the pleadings; plaintiff's motion was granted and defendant's was denied.

#### IV.

##### Arguments

##### A. The Decision Below Is Contrary to Guardianship of Thrasher.

The District Court in the present case says that the liability of the persons and estates named in Welf.C. 6650 is unconditional and absolute and contends that its decision is in agreement with the *Guardianship of Thrasher* (1951) 105 C.A. 2d 768. We believe that Thrasher holds that Welf.C. 6650 must be read with all other applicable code sections. That sometimes the liability imposed by the combined sections is absolute, and in other situations it is a secondary liability, or is non-existent.

In determining the liability of a husband in *Thrasher* the court considered Welf.C. 6650, 6655; Prob.C. 1505; and C.C. 155, and endeavoring to read all of these related statutes together as one statute the court says at page 777:

"We believe that the reasonable and proper construction of all of the applicable sections is that the husband of a wife who has been committed to a mental institution is primarily liable for her maintenance there to the extent of his financial ability to pay for it; that if she has estate over which a guardian is appointed, [fol. 65] he may not draw upon such estate for her maintenance so long as he has the financial ability to

pay for same; that it is not only the right but it is the duty of the Department of Mental Hygiene to protect and preserve the estate of a person legally committed to its care; that the Welfare and Institutions Code provides the means and method by which the state may receive payment from the insane person's estate, but this in no way releases the husband from his primary obligation, nor does it prevent the department from making proper objections in the guardianship proceeding to the shifting of said obligation to the guardianship estate."

In the case before the court the combination of statutes to be considered is different; out must go C.C. 155 and Prob.C. 1505 and in lieu thereof is C.C. 206 which reads in part as follows:

"It is the duty of the father, mother, and the children of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability. \* \* \*"

C.C. 206 adds the requirement of need and ability to pay, and there is nothing that we can find in the legislation leading up to Welf.C. 6650 that nullifies C.C. 206. As stated in *Thrasher* at page 777:

"\* \* \* We do not believe that it was the intention of the Legislature to overrule or ignore the provision of the Civil Code establishing the fundamental rights and duties of marriage, \* \* \*"

In light of the foregoing it would appear that a reasonable construction of the applicable statutes would impose [fol. 66] liability upon an adult child only where the parent is in need.

#### B. The Decision Below Denies the Defendant Equal Protection of the Law.

As stated by this court in *Department of Mental Hygiene v. McGilvery* (1958) 50 C. 2d 742, 755:

"The obvious purpose of the particular provisions of the statute here involved is to minimize the cost to the state and its agencies in providing assistance to the needy and distressed, by exacting contributions from persons standing in close relationship to those assisted. Accordingly, the classification which is claimed to have placed the deceased in a class apart must be shown to have a reasonable and substantial relation to the accomplishment of that purpose if the code provisions which are attacked are to withstand the claims of invalidity."

Welf.C. 19 provides in part:

"The purpose of this code is to provide for protection, care, and assistance to the people of the State in need thereof, and to promote the welfare and happiness of all of the people of the State by providing public assistance to all of its needy and distressed."

The incompetent in the case before the court is not "needy and distressed"; she has an estate of her own, and it may be larger than the daughter's.

Of course, if the daughter were a person primarily liable for the support of the incompetent such as a husband was [fol. 67] found to be liable for the support of a wife in the case of *Thrasher*, the question of improper classification would not arise. In *Thrasher* the liability was not based upon the need of the incompetent but upon the liability of a husband to support a wife. The same distinction was made in *Department of Mental Hygiene v. Black* (1961) 198 C.A. 2d 627. The obligation of a parent to support an afflicted child is an absolute one and has existed from time immemorial.

There is no such duty cast upon a child to support a parent. At 37 *Cal.Jur.* 2d 226 it is summarized as follows:

"Although text writers have occasionally referred to a 'natural obligation' of support which child owes to the parent, the common law recognizes no legal obligation of the sort, and accords to the parent no remedy against the child for non-support. Hence, in construing the statute creating the obligation, the tendency of

the court is to attribute to the language thereof a limited rather than a comprehensive meaning. \* \* \*

According, we contend that unless the need of the parent is first shown, the defendant is improperly and arbitrarily classified as a person liable under the scheme of the legislation in question.

[fol. 68]

C. The Decision Below Constitutes a Taking of Private Property Without Just Compensation.

This court in *McGilvery* quoted with approval from *State Commission in Lunacy v. Eldridge* (1908) 7 Cal. App. 298 as follows:

" \* \* \* certainly the payment of the expense or a part thereof, for the care and maintenance of one's relative, incapable of taking care of himself, could not be the taking of private property for a public use without compensation, since for the expenditure required a substantial equivalent is given by the agents of the state having management of the institution \* \* \* "

Again, the determining factor appears to be the need of the relative assisted. In *McGilvery* and *Eldridge* the incompetents were needy persons and the state was supporting them.

As stated at 11 *Cal. Jur.* 2d 820:

"In determining due process in a given case, respect must be had to the cause and object of the taking, whether under the taxing power the power of eminent domain, the power of assessment for local improvements, or some other power. If found to be suitable or admissible in the special case, the proceeding will be adjudged to comply with the constitutional requirements; but if found to be arbitrary, oppressive, or unjust, it may be declared to be lacking in due process."

The taking of the deceased daughter's property to provide for the support of a mother who already has an estate of her own does not come within constitutional requirements.

[fol. 69]

V.

## Conclusion

As the law now stands under the decision of the District Court in the present case all relatives mentioned in Welf.C. 6650 can be required to support those incompetents under the care of the Department of Mental Hygiene regardless of the financial circumstances of the parties, and further there is no requirement that the incompetent repay the relatives upon his release out of his own personal estate. The relatives mentioned under Welf.C. 6650 would be subject to the uncontrolled authority of the Department of Mental Hygiene to commence collection proceedings against them at any time regardless of the needs of the incompetent or the ability of the relative to pay. This does not reflect the yardstick of fair play generally expressed in due process.

Dated, Redwood City, California, April 15, 1963.

Respectfully submitted,

Dinkelspiel & Dinkelspiel, By Alan A. Dougherty,  
Attorneys for Appellant and Petitioner.



[fol. 70] [File endorsement omitted]

[fol. 71]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

S.F. 21349

[Title omitted]

RESPONDENT'S ANSWER TO APPELLANT'S PETITION FOR A  
HEARING BY THE SUPREME COURT—filed May 6, 1963

After Decision by the District Court of Appeal,  
State of California, First Appellate District,  
Division One, and Numbered Therein 1 Civil  
No. 20,576

City and County of San Francisco

Honorable Byron Arnold, Judge

[fol. 72] To the Honorable Phil S. Gibson, Chief Justice,  
and to the Honorable Associate Justices of the Supreme  
Court of the State of California

### Introduction

In the trial court, both parties moved for Judgment on the Pleadings. Plaintiff's motion was granted and that of the defendant was denied. Defendant appealed principally on the ground that before relatives of a state mental patient could be required to assist in meeting the cost of hospitalization, the patient's assets must be exhausted. The District Court of Appeal rejected the contention and affirmed the judgment below. Appellant now petitions this court for a hearing on the same ground.

### Facts

The Department of Mental Hygiene brought an action against the estate of Ellinor Green Vance, a deceased adult daughter of Auguste Schaeche, a patient at Napa State

Hospital since 1953 (Pet. 3; Op. ii).<sup>1</sup> The purpose of the suit was to obtain reimbursement for the care provided [fol. 73] to Mrs. Schaeche for the four years preceding Mrs. Vance's death. (Pet. 3; Op. ii.)

Evelyn Kirchner is the duly appointed Administratrix of the Estate of Ellinor Vance (Pet. 3; Op. iv). She is also the guardian of the estate of Mrs. Schaeche, the incompetent (Op. iv). Acting as Administratrix of the decedent's estate, Evelyn Kirchner, on January 25, 1961, rejected the creditor's claim filed by the Department of Mental Hygiene (Op. ii) and then in her capacity as the guardian of Auguste Schaeche, offered to pay the claim out of the assets of the incompetent (Op. iii-iv). The Department of Mental Hygiene refused to accept payment from the guardian and filed its action against the Administratrix. Appellant demurred on the sole ground that no cause of action was stated because the Complaint failed to allege that the incompetent had "no estate out of which the claim of plaintiff . . . [could] be satisfied." (Pet. 4.)

The Demurrer was overruled and an answer was filed which only denied liability (Pet. 4) and set up two separate defenses.

Defendant's first contention was that because the Department of Mental Hygiene refused to present an itemized bill for payment when requested by Evelyn Kirchner, acting in her capacity as guardian, that the Department should be estopped from asserting the same claim against the decedent's estate.

The second defense was that because the Department of Mental Hygiene had, in 1958, in order to avoid liquidating the patient's assets, obtained an equitable lien in the guardianship estate of the incompetent to secure its rights, as against the patient, for possible reimbursement at a later date. The "rights of plaintiff have been fully adjudicated and determined." (Pet. 4; Op. iii.) Therefore, the Department of Mental Hygiene was entitled to nothing from the estate of the daughter of the patient.

<sup>1</sup> The opinion of the District Court of Appeal is set out in the Appendix of the Petition for Hearing; therefore, reference will be made to it as "Op." and to the Petition itself as "Pet."

As already noted, appellant denied only the legal conclusion of the liability of decedent's estate admitting thereby all the factual allegations of the Complaint. Plaintiff Department of Mental Hygiene also admitted all the factual allegations of defendant's Answer. With no factual questions to resolve, both parties moved for Judgment on the Pleadings (Op. iv-v). The motion of plaintiff Department of Mental Hygiene was granted and that of defendant was denied.

Defendant appealed the granting of the motion. The District Court of Appeal affirmed the judgment below in a thorough, carefully reasoned opinion by Mr. Justice Sullivan.

[fol. 75]

#### Question Presented

Is the Department of Mental Hygiene required to exhaust the patient's estate before it can look for reimbursement to any other obligor whose liability for the cost of the patient's care is by statute joint and several?

#### Argument

Appellant has unfairly "loaded the question" presented to the court by adding the statement that the patient "has adequate funds of her own to pay the charges therefor." (Pet. 2.)

Appellant alleges that the patient has an estate in the amount of \$10,903.35 and that, therefore, within the meaning of Civil Code section 206, the patient is not a "needy" or poor person unable to maintain herself; therefore, she reasons, there is no liability on the patient's daughter or her estate. (Pet. 6.)

[fol. 76] However, the appellant acknowledges that as of October 23, 1958, the estate of the patient was encumbered

<sup>2</sup> The element of "need" is introduced by reference to sections of the Civil Code which are not even pertinent. On the question of reimbursement from relatives of patients in state hospitals, the Welfare and Institutions Code is exclusive. *Department of Mental Hygiene v. Shane*, 142 Cal.App.2d 881. See also *County of San Bernardino v. Simmons*, 46 Cal.2d 394, 398 (1956).

by a lien in the amount of \$6,425 which secured accrued charges as of that date and for *all other future charges*. (Pet. 4.) In other words, the equity the patient had as of 1958 was less than \$4,000 and that remaining equity was completely wiped out by the accrual of charges since that date. Stating that the patient has "adequate funds of her own," in these circumstances, is very much like saying that a person with no assets other than a home valued at \$10,000 but with encumbrances of *over* \$10,000 has ample estate to meet other obligations. The only reason this patient had anything left in her estate was that the Department was attempting to protect and preserve the assets of the patient for her future care and attempting to comply with the mandate of section 6655 of the Welfare and Institutions Code which *prohibits* the Department from the asking for support from the patient's estate if such "payment will reduce the estate to such an extent that he is likely to become a burden on the community in the event of his discharge from the hospital." The record is bare of any showing by appellant that the patient's estate is of such [fol. 77] size that this mandate could be complied with. The appellant seems to contend that the Department should confiscate the entire estate of each patient in order to make meaningful the joint and several liability of the relatives (see section 6650).

It would be incredible to think that the unmercenary and humanitarian policy the Department has followed in the treatment of the patient and her estate can operate to absolve all other relatives from responsibility for the patient's hospitalization.

#### I. The Decision Is Not Contrary to the Guardianship of Thrasher.

Before the District Court of Appeal and in his Petition (p. 5), appellant has attempted to construe the *Guardianship of Thrasher* (105 Cal.App.2d 768) as holding that the husband in that case was "primarily" liable and that the patient's estate was only a secondarily liability. In that case, the husband guardian paid for his wife's hospitaliza-

tion but sought reimbursement from her estate. The court refused to allow him to do so because a husband always has an obligation to support his wife, and because under 6650 a husband is jointly and severally liable for his wife's [fol. 78] hospitalization. On this point, the District Court of Appeal here said:

"... the court did not hold, as defendant here argues, that the husband's liability on the second basis, that is under Section 6650, arose *only because* of his liability on the first basis, that is, because of his 'primary duty' as a husband to support his wife." (Emphasis by the court.) (Op. ix.)

The District Court of Appeal did, in this case, precisely as did the court in *Thrasher*. That is, they protected the estate of the patient. The court also quoted from the *Department of Mental Hygiene v. Black*, 198 Cal.App.2d 627 at 632 (1961):

"The incompetent's mother being a person liable for her maintenance and care (Welf. & Inst. Code, §6650), there is thus no merit to the first of appellant's contentions that the personal assets of the incompetent patient must first be exhausted before liability is imposed on responsible relatives."

The court in the instant case also noted:

"that the court [in *Black*] held the statute imposed liability *ex proprio vigore* and not because of any independent 'primary duty' on the part of the mother to support her daughter. Neither *Thrasher* nor *Black*, therefore, restrict or qualify the express declaration of joint and several liability found in section 6650." (Op. x.)

Thus the District Court of Appeal here found that *Thrasher* supported its decision, both as to its rationale of unrestricted joint and several liability and its result in preserving at least some of the patient's assets.

[fol. 79]

II. The Court Properly Concluded That the Legislative History of 6650 Did Not Require Exhaustion of the Patient's Assets Before Other Relatives Could Be Made Responsible.

The District Court of Appeal also demonstrated that the legislative history of section 6650 compelled the same result. From 1943, until it was repealed in 1945, the joint and several liability was expressly conditioned by a statement that:

"except that where the insane person or inebriate has an estate such estate shall be exhausted before liability passes to the relatives."

The court correctly observed that it is to be presumed that when the Legislature deletes an express provision of a statute, it intends to make a change in law.

III. The District Court of Appeal Correctly Concluded That Any Joint and Several Obligor May Be Sued Alone.

In discussing the joint and several liability imposed by 6650, the court below stated:

"The law is settled that where an obligation is joint and several, any or all of the persons obligated may be compelled to pay the indebtedness. A person thus [fol. 80] *liable may be sued alone without joining any others also liable*. In the case at bench, therefore, it was permissible for the Department of Mental Hygiene to enforce the statutory liability against the daughter of the mentally ill person without proceeding against the mentally ill person herself. (*Moreing v. Weber* (1906), 3 Cal.App. 14, 21-22 [84 P. 220]; *McClintick v. Frame* (1929) 98 Cal.App. 338, 343 [276 P. 1033]; Code Civ. Proc., §83.) (Emphasis added.)

It should be observed that the defendant did not attempt to require joinder of the patient's estate as another defendant. The Administratrix was content to assert that until the patient was rendered destitute, the Department could proceed against no one else. Such a position is untenable.



#### IV. Appellant Violates Her Fiduciary Duty As Guardian By Utilizing Her Ward's Assets to Her Personal Advantage.

Evelyn Kirchner is both Administratrix of this estate and guardian of the estate of the patient here concerned (Pet. 3; Op. iv). Acting as Administratrix she rejected respondent's creditor's claim and then offered to pay the sums due from her ward's estate (Pet. 3-4; Op. iv).

Of course, if full payment were made, this would preclude suit against the decedent's estate by plaintiff for the [fol. 81] cost of past care. It should be noted that there is an obvious conflict of interest between Evelyn Kirchner's status as guardian of the estate of this incompetent and her capacity as Administratrix of the estate of the patient's daughter. Her duty as guardian to manage the estate frugally and to pay the cost for support of the ward only when necessary (Prob. Code §1502) is violated when she offers to pay a debt to a creditor who is willing to look to a different joint and several obligor for payment. Her position as Administratrix is an interest adverse to the faithful performance of her duties as guardian (Prob. Code §1580(5)) and would justify her removal.

The full significance of this conflict of interest and the resulting prejudice to the ward is evident if the court takes judicial notice of the probate file of the decedent's estate herein (SF Probate 154752).<sup>3</sup> Except for a small bequest of \$100, Evelyn Kirchner is the sole legatee under the will admitted to probate therein. Therefore, to the extent she [fol. 82] utilizes the estate of her ward to pay the cost of care for the ward she personally benefits by increasing the amount she will inherit from the decedent's estate (of which she is both Administratrix and principal legatee).

<sup>3</sup> The appellant contends these matters are not properly before the court; but the trial court was asked to take judicial notice of this probate file (CT 24:18). The appellate court must presume that it did so. *Legg v. Mutual Benefit Ass'n*, 184 Cal.App.2d 482 at 488 (1960); *Stafford v. Ware*, 187 Cal.App.2d 227 at 236 (1960); *Alisal Sanitary Dist. v. Kennedy*, 180 Cal.App.2d 69 at 81 (1960).

Such a flagrant example of benefiting from one's own wrong (C.C. 3517) should not be countenanced by this court.

V. The Legislature and the Courts Have Made Clear the Department Has a Duty to Preserve at Least Some of the Patient's Estate.

As already noted, section 6655 prohibits the taking of the patient's estate for hospitalization charges if such "payment will reduce his estate to such an extent that he is likely to become a burden on the community in the event of his discharge from the hospital." In order to give the patient this protection without abandoning the taxpayer's claim to reimbursement, an equitable lien is frequently used as in this case. The courts have approved its use and only last year the District Court of Appeal in the *Estate of Mims*, 202 Cal.App.2d 332 (1962) considered a case in which the patient was actually released from the hospital and used his property for the rest of his life subject to [fol. 83] the Department's lien.\* In protecting the lien from attack by the heirs, Mr. Justice Bray pointed out:

"The probate court's power to protect the state in its claim for care of the incompetent and at the same time to protect the incompetent by not requiring an immediate disposal of his property to meet the state's claim is a broad one incidental to its jurisdiction." (202 Cal.App.2d at 345.)

To hold that the Department *must* exhaust a patient's assets before asserting the liability of 6650 against the relatives would mean that the *Setzer* and *Mims* cases would

\* "The probate court, by its creation of an equitable lien thus did justice both to the incompetent, whose estate was enabled to be preserved during her lifetime, and to the department by making it possible for the department to recover for the taxpayers of California after the death of the incompetent the unpaid charges for her care. It is difficult to imagine a situation in which it would be more appropriate to impose an equitable lien since it serves to protect all parties concerned." *Estate of Setzer*, 192 Cal.App.2d at 642-3.)

be rendered ineffectual because the Department would be forced, in most cases, to impoverish each patient without regard to his or her age, dependents or financial circumstances if it wished to assert any right to reimbursement against other relatives. This is not required by law or public policy.

#### VI. Private Property Has Not Been Taken Without Just Compensation.

Appellant's last contention, that property has been taken without compensation, demonstrates its own lack of merit by the cases she cites. *Département of Mental Hygiene v. McGilvery*, 50 Cal.2d 742 (quoting in part from *State Commission in Lunacy v. Eldridge*, 7 Cal.App. 298) pointed out that the hospital services provided were a substantial equivalent to the reimbursement requested. In point of fact the services are given at a much lower rate than are provided by private institutions.

[fol. 85]

#### Conclusion

The opinion of the District Court of Appeal correctly deals with all the facts and principles of law before it. It is in accord with all the authorities.

The Petition for Hearing should be denied.

Respectfully submitted,

STANLEY MOSK, Attorney General of the State of California;

JOHN CARL PORTER, Deputy Attorney General, Attorneys for Respondent.

[fol. 86]

[File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

S. F. 21349

DEPARTMENT OF MENTAL HYGIENE, Plaintiff and Respondent,

v.

EVELYN KIRCHNER, as Administratrix of the Estate of  
ELLINOR GREEN VANCE, Defendant and Appellant.

OPINION—Filed January 30, 1964

Defendant administratrix appeals from a judgment on the pleadings, in the sum of \$7,554.22, entered against her in an action by the Department of Mental Hygiene of the State of California to recover the alleged cost of care, support, maintenance and medical attention supplied to Auguste Schaeche, mother of defendant's intestate, as a committed inmate of a state institution for the mentally ill. As will appear, we have concluded that the statute upon which the judgment is based violates the basic constitutional guaranty of equal protection of the law, and that the judgment should be reversed.

Plaintiff in its complaint alleges in substance that in January 1953 the mother, Mrs. Schaeche, was adjudged [fol. 87] 'mentally ill' and by the court committed to Agnews<sup>2</sup>.

<sup>1</sup> Welfare and Institutions Code section 5040: "'Mentally ill persons' means persons who come within either or both of the following descriptions:

"(a) Who are of such mental condition that they are in need of supervision, treatment, care, or restraint.

"(b) Who are of such mental condition that they are dangerous to themselves or to the person or property of others, and are in need of supervision, treatment, care, or restraint."

<sup>2</sup> Welfare and Institutions Code section 6500: "There are in the State the following state hospitals for the care and treatment of the insane, the mentally ill, and the mentally disordered: . . . 3. Agnews State Hospital near the City of San Jose. . . ."

State Hospital where she had remained under confinement to the date the complaint was filed in April 1961; that the decedent, Ellinor Vance, was Mrs. Schaeche's daughter "and as such was legally responsible" for her committed mother's care and maintenance at Agnews; that pursuant to section 6651<sup>3</sup> of the Welfare and Institutions Code the Director of Mental Hygiene determined the rate for such care and maintenance, and "said charges were made continuously for every month" Mrs. Schaeche was a "patient" at Agnews; [fol. 88] that for the period of August 25, 1956, through August 24, 1960, such charges totaled \$7,554.22, none of which had been paid; that the daughter died on August 25, 1960, and in November 1960 plaintiff filed against the daughter's estate its creditor's claim for \$7,554.22, which was rejected, and which sum plaintiff now seeks to recover.

Defendant in her answer denies that her intestate, the daughter, "was legally responsible" for the mother's care and maintenance furnished by the state at Agnews "or any other place whatsoever"; denies any indebtedness to plaintiff; and furthermore alleges that the incompetent mother herself owns (in her guardianship estate) some \$11,000 in cash, to which resort should first be had before attempt is made by the state to charge her children with the costs of her care. More specifically, defendant directly challenges the right of a state to statutorily impose liability upon,

<sup>3</sup> Welfare and Institutions Code section 6651: "The rate for the care, support, and maintenance of all mentally ill persons and inebriates at the state hospitals . . . where there is liability to pay . . . shall be reviewed each fiscal year and fixed at the statewide average per capita . . . as determined by the Director of Mental Hygiene. . . ."

<sup>4</sup> *Historical Background:*

At common law there was no liability on a child to support parents, or on parents to support an adult child. (See, e.g., *County of Los Angeles v. Frisbie* (1942) 19 Cal.2d 634, 645-646 [11]; *Duffy v. Yordi* (1906) 149 Cal. 140, 141-142 ("at common law there was no legal obligation on the part of the child to [support a parent] . . . such obligation depends entirely upon statutory provisions"); *Napa State Hospital v. Flaherty* (1901) 134 Cal. 315, 316-317 ("The right to maintain any action against the father for the support of an adult child, if any such right exists, is purely a creation of

and collect from, one adult for the cost of supporting another adult whom the state has committed to one of its hospitals for the mentally ill or insane. Both parties moved for judgment on the pleadings, the court granted plaintiff's motion and denied that of defendant, and from the ensuing judgment defendant appeals.

In support of the judgment plaintiff department relies upon the declaration in section 6650 of the Welfare and Institutions Code that "The husband, wife, father, mother, or children of a mentally ill person or inebriate . . . shall be liable for his care, support, and maintenance in a state institution of which he is an inmate. . . ." (Italics added.)

The department, citing *Guardianship of Thrasher* (1951) 105 Cal.App.2d 768, and *Dept. of Mental Hygiene v. Black* (1961) 198 Cal.App.2d 627, asserts flatly that the liability purportedly imposed by section 6650 upon the persons therein designated is not only, in the language of the section, "a joint and several liability," but is absolute and unconditional, and that "the fact that the patient has assets of her own becomes completely immaterial." In *Thrasher* it was held (pp. 776-778 [3-8] of 105 Cal.App.2d) that the husband of an incompetent committed to a state mental hospital was under the duty to support her therein even though she had estate of her own. That case is of small help to plaintiff here; manifestly, the basic obligation and relevant status of the husband arose from the marriage contract to which he was a consenting party and no consideration was given to the question as to whether imposing liability upon one spouse for support of the other in a state institution denies equal protection of the law to the servient spouse. (See also *Estate of Risse* (1957)

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the statute. No such right existed at common law"); 44 C.J.S., p. 175, fn. 79; p. 176, fn. 81; p. 183, fn. 79; 67 C.J.S., pp. 704-705; pp. 727-728, § 24; 39 Am.Jur., pp. 710-712; 41 Am.Jur. pp. 684-687.) We recognize that various states have undertaken from time to time to create an obligation upon children to support indigent parents and upon parents to support indigent adult children; some states have even purported to create and impose a support obligation on brothers and sisters and on grandparents and grandchildren. (See 41 Am.Jur., pp. 684-686, §§ 6-7; 67 C.J.S., p. 705, § 17; id., p. 728, § 24.)



156 Cal.App.2d 412, 421 [7].) However, in *Black* the court held the mother of a mentally ill person to be liable for the cost of the latter's support in a state hospital, with the declaration (p. 632 [2] of 198 Cal.App.2d) that by reason of the provisions of section 6650 there was no merit to the contention "that the personal assets of the incompetent patient must first be exhausted before liability is imposed on responsible relatives." (See also *County of Lake v. Forbes* (1941) 42 Cal.App.2d 744, 747 [3, 5], and *Janes v. Edwards* (1935) 4 Cal.App.2d 611, 612, involving [fol. 91] other and different statutes.) We proceed to the fundamental issue tendered by the case before us.

Recently in *Department of Mental Hygiene v. Hawley* (1963) 59 Cal.2d 247, the department, relying upon this same section 6650, attempted to collect from a father for the cost of care, support and maintenance in a state hospital for the mentally ill or insane of his son who had been charged with crime, but before trial of the criminal issue (and obviously without adjudication of that issue) had been found by the court to be insane and committed to such state hospital. We there held (pp. 255-256 [6]) that "The enactment and administration of laws providing for sequestration and treatment of persons in appropriate state institutions—subject of course, to the constitutional guaranties—who would endanger themselves or others if at large is a proper state function; being so, it follows that the expense of providing, operating and maintaining such institutions should (subject to reasonable exceptions *against the inmate or his estate*) be borne by the state." (Italics added.) We further held that recovery could not constitutionally be had against the father of the committed patient. This holding is dispositive of the issue before us. Whether the commitment is incidental to an alleged violation of a penal statute, [fol. 92] as in *Hawley*, or is essentially a civil commitment as in the instant case, the purposes of confinement and treatment or care in either case encompass the protection of society from the confined person, and his own protection and possible reclamation as a productive member of the body politic. Hence the cost of maintaining the state institution, including provision of adequate care for its

inmates, cannot be arbitrarily charged to one class in the society; such assessment violates the equal protection clause.

Although numerous cases can be cited wherein so-called support statutes have been sustained against various attacks,<sup>5</sup> research has disclosed no case which squarely faced, [fol. 93] considered, discussed and sustained<sup>6</sup> such statutes in the light of the basic question as to equal protection of the law in a case wherein it was sought to impose liability upon one person for the support of another in a state institution. No such constitutional issue appears to have received either consideration or documented resolution in *Dept. of Mental Hygiene v. McGilvery* (1958) *supra*, 50 Cal.2d 742 (see pp. 754-761, esp. p. 760 [22] wherein in this respect it is commented merely that "the present claim of unlawful classification may not properly be sustained"); neither is there any mention of either the United States or the California Constitutions in *Department of Mental Hygiene v. Shane* (1956) 142 Cal.App.2d Supp. 881, relied on in *McGilvery* with the statement (p. 752 [6] of 50 Cal.2d),

<sup>5</sup> See, e.g., *State v. Bateman* (1922, Kan.) 204 P. 682, 683 [2]; *County of Los Angeles v. Frisbie* (1942) *supra*, 19 Cal.2d 634, 645-646 [11]; *Mallatt v. Luihn* (1956, Ore.) 294 P.2d 871, 878-880 [3-13]; *Dept. of Mental Hygiene v. McGilvery* (1958) 50 Cal.2d 742, 760-761, [23] [24]; (attacks based on asserted lack of procedural due process).

*County of Los Angeles v. Hurlbut* (1941) 44 Cal.App.2d 88, 92-94 [1-5]; *Dept. of Mental Hygiene v. McGilvery* (1958) *supra*, 50 Cal.2d 742, 754-760 [11-22] *Mallatt v. Luihn* (1956, Ore.) *supra*, 294 P.2d 871, 882 [19-25]; *Kelley v. State Board of Social Welfare* (1947) 82 Cal.App.2d 627, 631-632 [2]; (attacks based on certain limited claims of discriminatory classification).

*Maricopa County v. Douglas* (1949, Ariz.) 208 P.2d 646, 649 [8-9] (attacks based on claim of double taxation); *Dept. of Mental Hygiene v. McGilvery* (1958) *supra*, 50 Cal.2d 742, 761 [25], and *Mallatt v. Luihn* (1956, Ore.) *supra*, 294 P.2d 871, 883-884 [28]; (attacks on ground of taking private property for public use without just compensation).

*State v. Webber* (1955, Ohio) 128 N.E.2d 3, 7 [3], and *State v. Trozler* (1930, Ind.) 173 N.E. 321, 323 [4] (constitutional question avoided or not discussed).

<sup>6</sup> Contra; see *Department of Mental Hygiene v. Hawley* (1963) *supra*, 59 Cal.2d 247.

"The present case cannot be distinguished from that case." It is axiomatic that cases are not authority for propositions not considered (*McDowell & Craig v. City of Santa Fe Springs* (1960) 54 Cal.2d 33, 38 [5]; *Maguire v. Hibernia* [fol. 94] *S. & L. Soc.* (1944) 23 Cal.2d 719, 730 [4]), and the *Shane* case obviously does not give substance to *McGilvery* on the subject constitutional issue.\*

We note that in *Hoeper v. Tax Commission* (1931) 284 U.S. 206, family relationship was not found an adequate basis for sustaining a statute under which the state attempted to assess an income tax against the husband measured in part by his wife's separate property income; the court there observed (p. 217), "The State is forbidden to deny due process of law or the equal protection of the laws for any purpose whatsoever." (Italics added.) Further, in *Estate of Tetsubumi Yano* (1922) 188 Cal. 645, 656-657 [14], blood relationship was found insufficient to constitute a basis for discrimination against a citizen minor whose father because of his race was (under a then held valid statute) ineligible for citizenship. (See also *Oyama v. California* (1948) 332 U.S. 633.) It is established in this state that the mere presence of wealth or lack thereof in an individual citizen cannot be the basis for valid class discrimination (*Dribin v. Superior Court* (1951) 37 Cal.2d 345, 348-350[1] [holding that a statute purporting to authorize a divorce from an insane spouse but limiting it to only those who could prove financial responsibility, constituted "arbitrary and unreasonable class discrimination"] and in the same case (at p. 352 [11]) we declared "It is elementary that 'The insane have always been regarded as subject to control on the part of the state, both for their protection and for the protection of others.'" (Italics added.)

Lastly, in resolving the issue now before us, we need not blind ourselves to the social evolution which has been developing during the past half century; it has brought expanded recognition of the *parens patriae* principle (see 44 C.J.S. 48, §3; 67 C.J.S. 624; 31 Words & Phrases 99-101) and other social responsibilities, including The California Rehabilitation Center Act (added Stats. 1961, ch. 850, p. 2228) and divers other public welfare programs to which

all citizens are contributing through presumptively duly apportioned taxes. From all of this it appears that former concepts which have been suggested to uphold the imposition of support liability upon a person selected by an administrative agent from classes of relatives designated by the Legislature may well be re-examined. Illustrative of California's acceptance of this principle is the provision of section 6655 of the Welfare and Institutions Code that payment for the care and support of a patient at a state hospital "shall not be exacted . . . if there is likelihood of the patient's recovery or release from the hospital and payment will reduce his estate to such an extent that he is likely to become a burden on the community in the event [fol. 96] of his discharge from the hospital." Thus, the state evidences concern that its committed patient shall not "become a burden on the community in the event of his discharge from the hospital," but at the same time its advocacy<sup>1</sup> of the case at bench would seem to indicate that it cares not at all that relatives of the patient, selected by a department head, be denuded of *their* assets in order to reimburse the state for its maintenance of the patient in a tax supported institution. Section 6650 by its terms imposes absolute liability upon, and does not even purport to vest in, the servient relatives any right of control over, or to recoup from, the assets of the patient. A statute obviously violates the equal protection clause if it selects one particular class of persons for a species of taxation and no rational basis supports such classification. (See *Blumenthal v. Board of Medical Examiners* (1962) 57 Cal.2d 228, 237 [13]; *Bilyeu v. State Employees' Retirement System* (1962) 58 Cal.2d 618, 623 [2].) Such a concept for the state's taking of a free man's property manifestly denies him equal protection of the law.

Anything found in *Dept. of Mental Hygiene v. McGilverly* (1958) *supra*, 50 Cal.2d 742, 754-761 [11-25] or in cases relying thereon (see e.g., *Dept. of Mental Hygiene v. Black*

<sup>1</sup> This is not a criticism of the department or its counsel; they are merely performing to the best of their ability the duty purportedly imposed by the statute.

[fol. 97] (1961) *supra*, 198 Cal.App.2d 627, 632 [2]; *Estate of Setzer* (1961) 192 Cal.App.2d 634, 637-638 [1]) contrary to the views herein expressed must be deemed disapproved.

The judgment is reversed and the cause is remanded with directions to enter judgment for defendant.

Schauer, J.

We Concur: Gibson, C.J., Traynor, J., McComb, J., Peters, J., Tobriner, J., Peek, J.

[fol. 98] [File endorsement omitted]

[fol. 99]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA  
S. F. 21349

[Title omitted]

RESPONDENT'S PETITION FOR A REHEARING BY THE  
SUPREME COURT—Filed February 14, 1964

To the Honorable Phil S. Gibson, Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the State of California:

Respondent presents this its petition for a rehearing by this Honorable Court after its decision rendered on January 30, 1964. Said opinion appears as Appendix "A" attached to this brief.

Respondent urges that rehearing be granted for the following reasons:

A. The holding of the court that one adult may not be compelled to support another in a state institution was not raised, briefed, argued or in issue, and Respondent should [fol. 100] be allowed to meet this question.

B. "Equal protection" of the law was not denied. In view of its unbroken acceptance for hundreds of years in the common law, its codification by forty-two legislatures, and its acceptance throughout western civilization, family responsibility cannot be said to involve a classification "palpably arbitrary."



C. *Hawley* is not dispositive, since the court there accepts the constitutional differences between civil and criminal commitments and because modern hospitals are for treatment, not incarceration.

D. Department of Mental Hygiene has no power to create hardship for responsible relatives; it is forbidden to do so. Claims of hardship can be tested by judicial review.

E. The economic impact on the state, the counties and private hospitals should be considered before the entire legislative program is invalidated.

F. The Legislature is best equipped to determine whether social evolution calls for free mental hospitalization.

G. The present opinion will result in increased attempts by adult children to commit their senile parents and will thereby result in a breakdown of the sense of family responsibility.

H. Rehearing is needed to clarify the decision: (a) Is not a prospective application of the decision called for; and (b) Is inter-spousal liability eliminated?

[fol. 101]

I. The Holding of the Court That One Adult May Not Be Obligated to Support a Closely Related Adult in a State Mental Hospital Was not in Issue, Was not Briefed or Argued Before This Court and a Rehearing Should Be Granted so That Respondent May Present its Arguments for the Court's Consideration.

The only contention raised by the appellant which resembles an equal protection argument appears on pages 7 and 8 of his Petition for Hearing. Appellant never questioned the basic premise (which is here the gravamen of the court's holding) that one adult can be required to support "persons standing in close relationship" to him. (*Department of Mental Hygiene v. McGilvery*, 50 Cal.2d 742, 755 (1958), quoted by appellant on page 7 of his petition.) His *only* contention was that the defendant was "improperly and arbitrarily classified as a person liable under



the scheme of legislation in question" *so long as* the patient had some estate of her own.

Before the District Court of Appeal appellant acknowledged that if there were a "primary obligation" of a daughter to support a mother the defendant would be liable (App. Op. Br. p. 4); but that the daughter's obligation was secondary to the liability of the mother's own estate. He also states his position on page 6 (App. Op. Br.) as:

"In the *McGilvery* case the incompetent was an adult child; there was a primary duty on the parent to support the child. Here there was no such primary duty, [fol. 102] and we contend that if any liability is to be imposed on the daughter or on her estate, it must be shown that not only the mother had no funds but that the daughter had the ability to pay."

In other words, the sole issue presented was the question of priority. However, the court also states that:

"... defendant directly challenges the right of a state to statutorily impose liability upon, and collect from, one adult for the cost of supporting another adult whom the state has committed to one of its hospitals for the mentally ill or insane." (Opinion, pp. 3-4)

While this correctly states the court's holding, an examination of the briefs will demonstrate this issue was never presented to or properly before the court. In addition, the transcript of the oral argument before the Supreme Court<sup>1</sup> will demonstrate that *nothing* said by defendant's counsel or *raised by questions from the bench* apprised either counsel of that which has become the holding of this court.

Respondent respectfully requests that it be granted a [fol. 103] rehearing to present its arguments<sup>2</sup> for the con-

<sup>1</sup> Copies of this transcript are being appended hereto.

<sup>2</sup> Cf. *Morgan v. United States*, 298 U.S. 468, at 481 (1935), "One who decides must hear."

sideration of the court on a question which has such vital economic and social consequences to the people of the State of California.

## II. Section 6650 of the Welfare and Institutions Code Does not Deny Equal Protection of the Laws.

Manifestly, not every classification violates the equal protection of the laws. Only those classifications which are "palpably arbitrary and beyond rational doubt erroneous,"<sup>3</sup> may be struck down as unconstitutional. Here the critical question is whether a classification based on a close family relationship fails for the above reason.

[fol. 104] Respondent contends that a classification deemed reasonable throughout Anglo-American jurisprudence and the common law, rigidly enforced by the Roman Law and Civil Law courts, codified by the Legislatures of at least forty-two states, sustained (in civil commitments) by every previous court which has considered it, reaffirmed after detailed and comprehensive examination by this court only five years ago, *cannot* be said to be so "palpably arbitrary" as to deny equal protection of the laws.

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<sup>3</sup> As quoted in *Dribin v. Superior Court*, 37 Cal.2d 345, 351 (1951). In *Dribin*, Justice Schauer clearly and succinctly states almost all of the principles by which the reasonableness or arbitrariness of a classification is to be judged.

"Wide discretion is vested in the Legislature in making the classification and every presumption is in favor of the validity of the statute. . . . [Citations.] A distinction in legislation is not arbitrary if any set of facts reasonably can be conceived that would sustain it. [Citations.] The existence of facts supporting the legislative judgment is to be presumed and the burden of overcoming the presumption of constitutionality is cast upon the assailant. . . . [Citations.] The classification should be reasonable; i.e., have a substantial relation to a legitimate object to be accomplished . . . [I]t is not our concern whether the Legislature has adopted what we think to be the wisest and most suitable means of accomplishing its objects. [Citations.]" 37 Cal.2d at 351-352.

Of course, an attack on the constitutionality of section 6650 must be based on these principles.

**A. Reciprocal Duties of Support Between  
Parents and Adult Children Were Well  
Established at Common Law.\***

The principle of charging a parent for the support of an incompetent or indigent child, minor or adult, is not a new concept. Of course, during the very early development of the common law the idea of an asylum or hospital for the mentally ill was unknown. Those who behaved strangely were looked upon as curiosities, laughed at or punished and allowed to wander around the community.<sup>8</sup> But the concept that the immediate family had a

\* It may be argued that the term "common law" includes only decisional law and not statutes passed by Parliament. It would appear however that the common law referred to in section 22.2 of the Civil Code "includes not only the *lex non scripta*, but also the written statutes enacted by Parliament." (*People v. One 1941 Chevrolet Coupe*, 37 Cal.2d 283, 287 (1951))—More precisely, those Acts passed by Parliament prior to the separation of the American Colonies from England. *Moore v. Purse Seine Net*, 18 Cal.2d 835, 839 (1941).

That the old English statutes must be considered an integral part of the whole fabric of the common law is confirmed in a somewhat euphuistic definition of the term, found in an 1850 report to the Governor from the Senate Committee on the Judiciary. The report is reprinted in 1 Cal. Ann. 588-604, and at page 592 the following definition is offered:

"The common law is that system of jurisprudence which deducing its origin from the traditionary customs and simple laws of the Saxons, becoming blended with many of the customs and laws of the Normans, enriched with the most valuable portions of the Civil Law, *modified and enlarged by numerous Acts of the English Parliament*, smoothed in its asperities and moulded into shape by a succession of as learned and wise and sagacious intellects as the world ever saw, has grown up, during the lapse of centuries, under the reformed religion and enlightened philosophy and literature of England, and has come down to us, amended and improved by American legislation, and adapted to the Republican principles and energetic character of the American people." (Emphasis added.) (See also footnote 8, *People v. Sidener*, 58 Cal.2d 645, 661 (1962).)

<sup>8</sup> See Appendix "B", discussion by Dr. Walter Rapaport. Appendix "G" also contains an interesting history of the early treatment of the insane.

moral and legal duty to support the indigent and insane was an early part of the development of the common law.

As early as 1601 it was established that under certain conditions such an obligation of support would be imposed [fol. 106] on relatives of close consanguinity. 43 Elizabeth, chapter 2, section 7, states:

"VII. And be it further enacted, that the father and grandfather, and the mother and grandmother, and the children of every poor, old, blind, lame and impotent person, or other poor person not able to work, being of a sufficient ability, shall, at their own charges, relieve and maintain every such poor person in that manner, and according to that rate, as by the justices of peace of that county where such sufficient persons dwell, or the greater number of them, at their general quarter-sessions shall be affected; (2) upon pain that every one of them shall forfeit twenty shillings for every month which they shall fail therein."

Note that no distinction is made between adult children and minor children, either as to their right to or duty of support.

In 4 Holdsworth's History of English Law 157, the author notes that this statute made parents "liable to maintain their pauper children and children their parents." And at page 397 it is further noted that "parents were made liable to maintain their impotent children and children their impotent parents . . ." "Impotent" is synonymous with "incompetent" and fits into the pattern of establishing a liability for care of those unable to maintain themselves.

Illustrative of the manner in which this old statute was interpreted is the case of *Cole v. Brown*, 2 K.B. 301 (1907). In that case the son of an insane woman was required to pay the patient's guardian for the cost of her care in an asylum. The court agreed that liability could be imposed under the Statute of Elizabeth, making no distinction between the obligations of an adult child as against those of a minor child. Moreover, in a concurring opinion it was noted, at page 304, that the liability might not be confined

solely to "lunatics who are paupers and it may be that it applies to a lunatic who was not a pauper . . ."

In the United States those decisions<sup>6</sup> which undertook to trace the development of the liability here concerned found the doctrine had existed in Anglo-American jurisprudence for 360 years, stemming from the Statute of Elizabeth already referred to *supra*, page 8. *People v. Hill*, 163 Ill. 186, 46 N.E. 796, 797-8 (1896), found the duty of support [fol. 108] port was a principle of natural law and one which was enforced by the courts of the civil law countries.<sup>7</sup> Thus 43 Elizabeth, chapter 2, section 7 was passed to correct this "defect" in the English law and to "transform[ ] the im-

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<sup>6</sup> Footnote 4 of the court's opinion refers to several cases stating that liability for the support of an adult child by a parent and vice versa was unknown at common law. In none of the cases was the history of the proposition traced. In one case (*Duffy v. Yordi*, 149 Cal. 140) the court did state the support duty was a statutory invention and not a common law right. However, the fallacy of this reasoning is the erroneous assumption that the term "Common law" does not include statutory Acts of Parliament prior to the separation of the Colonies from England. See *supra*, footnote 4, for documentation of this proposition.

<sup>7</sup> Common law lawyers, who are prone to believe civilization was born during the Grand Assizes, sometimes forget while the law in England was being born a sophisticated and comprehensive system of jurisprudence had existed on the continent for centuries. As mentioned in *People v. Hill*, *supra*, reciprocal duties of support between adult children and parents were always enforced in civil law countries. See also 1 Blackstone Commentaries 447-8 (Lewis's Edition, 1902).

Roman law unequivocally imposed a reciprocal duty of support between insane parents and adult children. Thus we find in about 529 A.D. (see 12 The Civil Law (Trans. J.P. Scott) 62) the Code of Justinian, Book I, Extract of Novel 115, Chapter III, stating that children who did not care for their insane parents were disinherited even when a bequest was made by will and the inheritance went to the one who supplied support. Fathers had the same duty to insane adult children and the same penalty applied.

The Bible makes clear a duty to one's parents. Exodus 20:12, 21:17, Leviticus 20:9, Deut. 5:16. Plato's *Republic* also states the family was responsible for caring for the insane. See Appendix "G", p. 8.

perfect moral duty into a statutory and legal liability." See also *Beach v. Government of the District of Columbia*, 320 F.2d 790, 792 (1963).

In summary, the support liability here concerned is not one of recent contrivance. It has a long and venerable history in Anglo-American jurisprudence and western civilization.

[fol. 109]

B. The Legislatures of Forty-two States  
Have Found the Classification Herein  
to Be Reasonable.

In considering whether the immediate family is a reasonable class to be liable for, within their ability to pay, the cost of medical treatment given in a state institution, it is relevant to consider that forty-two legislatures of this Union, have enacted support laws with almost identical liabilities.\*

Presumably this process involved thousands of legislators, each presumably sworn to uphold their and the United States Constitution; each legislature presumably held hearings, took evidence as to cost, hospitalization problems and policy;° presumably each considered and debated the merits of competing economic, political and social values. Yet *each* arrived at a classification virtually identical to the one at bench. Can it fairly be said that their collective and individual judgments as to reasonableness [fol. 110] of a classification, expressing such a unanimity is nevertheless, "palpably arbitrary and beyond rational doubt erroneous." *Dribin v. Superior Court*, *supra*, 37 Cal.2d, 351.

Respondent respectfully submits that it cannot.

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\* See Appendix "C" for a collection of statutes. The National Association of Reimbursement Officers states forty-five states impose this liability. However, as of this date we can only verify forty-two. As the court herein observes (Opinion, footnote 4), some states extend the class to grandparents, grandchildren, brothers and sisters. Few have defined a smaller class than is involved here.

° For a discussion herein of a few of these problems see *infra*, pages 79-80.



**C. Every Previously Reported Decision Has Sustained the Constitutionality of Imposing Liability on the Immediate Family, as a Class, for Civil Commitments Against Attacks on Both Due Process and Equal Protection Grounds.**

The most recent case involving the instant problem is *Beach v. District of Columbia*, 320 F.2d 790 (1963). A petition for Writ of Certiorari in the United States Supreme Court was denied on December 9, 1963.

Section 21-318 of the District of Columbia Code contains a provision virtually identical to Welfare and Institutions Code section 6650 making liable the immediate family of a mentally ill person for the cost of care of such person in a District institution.<sup>10</sup>

In the *Beach* case the patient's incapacity and commitment [fol. 111] arose after she had attained her majority. The District of Columbia attempted to hold liable the father of the woman for a portion of the costs involved in maintaining her. Judgment was entered in favor of the District, from which the father appealed.

In its opinion the Federal Circuit Court, at page 792, states the main issue: "Appellant's basic challenge to the judgment is that it deprives him of his property without due process of law."

The court discussed the long history of this liability, early recognized in England.

The court then proceeded to enunciate, in clear and concise language, the reasons why the imposition of such liability cannot be deemed arbitrary or unreasonable (page 793):

<sup>10</sup> Section 21-318 Liability of relatives for costs of maintenance and treatment.

"The father, mother, husband, wife, and adult children of an insane person, if of sufficient ability, and the committee or guardian of his or her person and estate, if his or her estate is sufficient for the purpose, shall pay the cost to the District of Columbia of his or her maintenance, including treatment in Saint Elizabeths Hospital or in any other hospital to which the insane person may be committed. . . ."

"... [W]hen the law turns also to the father for help, if he is able to give it, when the estate of the incompetent is insufficient, it does so only to supplement the public responsibility. Placing a secondary obligation upon the father finds its validity in the reasonableness of attaching legal significance to the natural bonds of consanguinity. It is not unreasonable, it is not a denial of due process, for the law to attach an enforceable obligation to the moral obligation [fol. 112] which exists in the usual family relationship of father and daughter. Recognition by Statute of this obligation is not at odds with recognition that the public in many cases is called upon to supply total support for such individuals, whose faculties or estates are unable to do so." (Emphasis added.)

The judgment holding the father liable was affirmed.

Although couched in terms of the "reasonableness" of requiring a father to support his adult daughter, the holding of *Beach* is based on the due process clause since the equal protection clause does not, by its terms, apply to the federal government. It is submitted, however, that *Bolling v. Sharpe*, 347 U.S. 497 (1954),<sup>11</sup> also a District of Columbia case, demonstrates the reasoning in *Beach* does come to bear upon the instant problem.

Brushing aside any technical distinction between equal protection and due process, the United States Supreme Court, at page 499, observed that, while equal protection may be a more explicit safeguard than due process and hence not always interchangeable with it, "the concepts [fol. 113] of equal protection and due process, both stemming from our American ideal of fairness, are not mutually exclusive." (Emphasis added.) Cf. *Detroit Bank v. United States*, 317 U.S. 329, 337-338 (1943); *Curran v. Wallace*, 306 U.S. 1, 13-14 (1938). The court then proceeded to strike down racial discrimination in the District of Columbia under the same basic rationale it used in *Brown* under equal protection.

<sup>11</sup> This was a companion case to *Brown v. Board of Education*, 347 U.S. 483 (1954) decided the same day, which used the equal protection clause to invalidate racial segregation in the states.

Hence it is appropriate to refer to both equal protection cases and to cases where "due process" objections were made and rejected. Without exception, support statutes involving classifications virtually identical to that here in issue were sustained as being neither arbitrary nor unreasonable. See *People v. Hill*, 163 Ill. 186, 46 N.E. 796, 37 L.R.A. 634 (1896); *State v. Bateman*, 110 Kan. 546, 204 P. 682 (1922); *In re Idleman*, 146 Ore. 13, 27 P.2d 305 (1933); *State v. Thurston County*, 199 Wash. 398, 92 P.2d 234 (1939); *Commonwealth v. Zomnick*, 362 Pa. 299, 66 Atl. 2d 237 (1949); *Kough v. Hoehler*, 413 Ill. 409, 103 N.E. 2d 177 (1956); *State v. Webber*, 163 Ohio St. 598, 128 N.E. 2d 3 (1955).

An equal protection argument was also made and rejected in *Kough v. Hoehler*, *supra*. Although the holding in that case was to the effect that a classification based on civil [fol. 114] versus criminal commitment was not unreasonable,<sup>12</sup> it has since been cited as more general authority on the question of whether the particular support statute denied equal protection (See *Department of Public Welfare v. Haas*, 15 Ill. 2d 204, 154 N.E.2d 265, 271 (1958)).

Perhaps the most succinct summary of the attitude of the courts in the several states is found in a California case, *State Commission in Lunacy v. Eldridge*, 7 Cal.App. 298, 304 (1908):

"And, as to the proposition of the alleged unequal burden imposed upon one class, thus, as contended, discriminating in favor of another upon whom the burden is not cast, the answer is, we think, that the so-called unequal burden is only one springing from a natural duty which, as to its performance, the legislature has recognized by positive enactment. (Civ. Code, §§ 38, 206.)"

<sup>12</sup> See discussion of this holding as it relates to *Department of Mental Hygiene v. Hawley*, 59 Cal.2d 247, 255 (1963), *infra*, p. 19.

**D. *McGilvery* Considered at Length Whether Equal Protection Was Denied by Virtue of an Improper Classification.**

The court states in its opinion at page 8 that it had in *McGilvery* "commented merely that the present claim of [fol. 115] unlawful classification may not be properly sustained." This characterization hardly does justice to an opinion which states:

"A rehearing was ordered to consider the contention of the defendant, first elaborated upon in the petition for rehearing, that the provisions of [this law] ... [result in] a deprivation of property without equal protection of law, and without just compensation in violation of the state and federal Constitutions." (50 Cal.2d 742)

This court then considered the equal protection argument for thirteen pages (pp. 747-760). Such detailed consideration can hardly be said to be a "mere comment."

Also at page 8 the court states:

"No such constitutional issue [that is, can liability for one person be imposed on another for support in a state institution] appears to have received consideration ... in *Department of Mental Hygiene v. McGilvery* ..."

Such an avoidance of *McGilvery's* significance and precedent value hardly seems permissible in view of the strong dissent covering exactly<sup>13</sup> what the court states is here [fol. 116] being raised for the first time. (Opinion pp. 7-8.)

**III. *Hawley* Offers No Support for the Holding Here.**

The court has held that "the cost of maintaining the state [mental] institution, including provision for its sup-

<sup>13</sup> "Particularly do I believe that there is a serious question of the constitutional right of the Legislature to impose liability for the maintenance of an adult person upon any other person who has not voluntarily (as in the case of marriage, for example) assumed an obligation to answer for such support. . . ." (50 Cal.2d 766.)

port cannot be arbitrarily charged to one class [the immediate family] in society; such assessment violates the equal protection clause." (Opinion, p. 7.)

This conclusion is reached first by reasoning that *Department of Mental Hygiene v. Hawley*, 59 Cal.2d 247 (1963), "is dispositive of the issue before us." (Opinion, p. 6.) Second, it is said that the commitment is primarily for the protection of society and the patient and thus the cost of such protection is society's obligation. (Opinion, p. 7.)

Respondent submits that *Hawley* does not compel the holding here, and the reasons for civil as opposed to criminal commitments are so diverse as to offer no constitutional parallels. In addition, the emphasis on "protection of society" in the opinion is supported neither by case law nor modern psychiatry, both of which emphasize that [fol. 117] modern state hospitals are primarily, indeed almost exclusively, places of treatment for mental diseases, not institutions of incarceration. Moreover, the fact that some benefit to the public accrues from the use of state hospitals, is not inconsistent with individual responsibility for those who receive the benefits, including the family.

#### A. Constitutional Differences Separate Commitments Merely for Insanity and Those Involving a Criminal Charge.

In *Kough v. Hoehler*, *supra*, 413 Ill. 409, 109 N.E.2d 177 (1952), the defendants argued, as the court implies here, that there is no constitutional difference, insofar as equal protection is concerned, between liability for the family of one committed civilly and that of the family of one in custody due to a pending criminal charge. The court rejected that contention stating:

"We cannot agree with plaintiff's reasoning that there is no valid basis for making a distinction between persons who are in the hospital merely for treatment and those who are imprisoned on account of some criminal charge or offense and who, if they were in physical and mental health, would be in the jails or

penitentiaries. We think there is a clear basis for distinction. Inmates against whom there are *no criminal charges*, or who have been guilty of no criminal [fol. 118] offenses, *are in the hospital solely for treatment*. Those who are charged with crime, or who have been convicted of crime, would ordinarily be in the jail or penitentiary, but on account of the fact that there are no facilities there for treating them for their physical and mental ills they are transferred to the hospitals. Moreover, the public is vitally and directly interested in those who are in custody. They are in custody initially for the protection of the public, when convicted or accused of a crime. They do not cease to be of intimate consideration to the public merely because they are, or become, insane, nor do they cease to be in custody for the same reason. *Those patients in the State hospitals for the purpose of treatment alone are of direct and vital interest only to their relatives and friends*. It is true that the public has an indirect moral interest in their care and well being, but they are of direct consideration only to their close friends and relatives. It was a valid exercise of the discretion vested in the legislature to make a distinction between criminal patients and those who are not criminal." (Emphasis added.) 109 N.E.2d, 181

[fol. 119] In other words, the Illinois Supreme Court found a constitutional difference in whether the relative's liability was incident to a civil commitment or connected with a criminal charge.

Only last year the very distinction swept aside now by this court (Opinion, pp. 6-7), was thought to be meaningful when it said:

"Thus here, equally as in *Brock*, the committed person is held in the state institution not merely because he is (or was) *insane* but because the state, in a proceeding instituted by it, has accused him of crime and *his detention is found to be necessary for the protection of the public*. . . ." *Department of Mental Hygiene*



v. *Hawley*, 59 Cal.2d 247, 255 (1963). (Emphasis by the Court.)<sup>14</sup>

Moreover, the ancient tradition of liability of the family for the aged and insane as expressed in<sup>15</sup> the Common Law, the Civil Law, the Torah, the Bible, The Republic and the Justinian Code, bearing as it does on the reasonableness of this classification, is almost totally absent where the criminally insane are concerned.

[fol. 120] Respondent submits that *Hawley* is not "dispositive" here and the distinction made there and discussed above would uphold the constitutionality of relative liability for civil commitments.

#### B. The Principal Purpose of the State Hospitals Is Not "Custodial" But Is to Provide Treatment for the Sick

No statute or legislative history is given or evidence referred to by the court to support its assumption that the primary purpose of the state institutions is for confinement of inmates or "for their protection and for the protection of others" (Opinion, pp. 9-10). The court's quote to this effect, attributed to *Dribin v. Superior Court*, 37 Cal.2d 345, 352 (1951), is actually a quote therein from 14 Cal. Jur. 341-342, section 6. This secondary authority was published in 1924 at a time when Dr. Walter Rapaport states:<sup>16</sup>

"... early in the twentieth century, while there was no feeling that the insane were sick, yet there was a genuine movement toward more humane and kindly care, and the institutions continued to be primarily *custodial* in nature." (Emphasis added.)

<sup>14</sup> Note the striking similarity in reasoning and language between what is said here and the first italicized portion of the Illinois Supreme Court's opinion in *Kough*, quoted, *supra*.

<sup>15</sup> See *supra*, pages 6-10.

<sup>16</sup> See Appendix "B", letter of Dr. Walter Rapaport, page one. For the appropriateness of such letter here, see *Pearson v. Social Welfare*, 54 Cal.2d 184, 210-11 (1960).

[fol. 121] This view followed a period during which the *custodial* or protection view prevailed. Of this period Dr. Rapaport says:

"Some considered the manifestations of the so-called insane person to be related to sinfulness, some to criminality, and in some instances the insane person was pictured to be related to God or some other power for good or for evil. Thus it is easy to understand why there was a public demand that this type of person be isolated from society on the basis of the majority feeling that they were a danger and a menace." (Ibid.)

Modern psychiatrists view the concept that the mentally ill are by and large dangerous as little more than a layman's superstition. Dr. Rapaport says:

"With the trend away from custody toward treatment, there has also developed the realization that by and large the mentally ill cannot be considered as dangerous to society. It has been established by scientific studies that people who have been in our hospitals or who are in our hospitals, commit less crimes of violence when compared to the general population than do those who have not been in our hospitals or are [fol. 122] not in our hospitals, and so the traditional concept that the mentally ill must be isolated and secluded in hospitals for the protection of society must be re-examined, and when it is carefully and thoroughly re-examined, I am sure that it will be concluded that we are no longer justified in retaining that concept." (Appendix "B", pp. 2-3.)

Dr. Rapaport further indicates (Ibid.) that barred windows and locked doors are, but for a handful of patients and those at Atascadero, a thing of a past age, as illustrated by Appendix "D." <sup>17</sup>

<sup>17</sup> In Appendix "D" there is a picture of a hospital built during a time when it was thought that state hospitals were primarily for the protection of society and the patient himself. Observe how anachronistic architecture derived from such thinking seems today.

Jurists as well as doctors share Dr. Rapaport's contempt for the concept of the "dangerous lunatic."<sup>18</sup>

Lloyd S. Nix, Judge of the Superior Court, Psychiatric Department, of Los Angeles, says:<sup>19</sup>

"Society has an underlying fear and misunderstanding of mental illness despite medical progress and [fol. 123] efforts at public education. . . . This influences not only the manner in which problems are presented to the court, but injects an element of emergency and danger even in cases where the person, although considered to be ill and in need of care, is not dangerous to himself or others."

Even the generally accepted conclusion that by and large patients are "committed" by court order against their will is outmoded. Voluntary admissions and certification by the health officer are attempted first and formal commitment is, in enlightened communities, merely a last resort.<sup>20</sup>

That the *primary* purpose of the state hospitals was to provide treatment was recognized at an early time by the California courts. In *State Commission in Lunacy v. Eldridge*, 7 Cal.App. 298 (1908) (Hearing denied by Supreme Court), the relatives argued that because of the public responsibility and consequent public benefit:

" . . . it amounts to a species of double taxation<sup>21</sup> to require individuals who have relatives in said hos-

<sup>18</sup> So characterized by the dissent in *Eldridge* and quoted in the dissent in *McGilvery*, at 768.

<sup>19</sup> See Nix, Recent Procedural Revisions in the Psychiatric Department, Superior Court of Los Angeles County, 34 L.A. Bar. Bull. 291 at 292 (1959).

<sup>20</sup> Nix, Op.Cit., at 292, 293, 309.

<sup>21</sup> The court herein states that the department's charges are a species of taxation (Opinion, p. 11). Such a contention has been repudiated by every court which has previously considered it, including *Eldridge* quoted above.

*Estate of Yturburru*, 134 Cal. 567, 569 (1901):

"It is not double taxation, nor taxation at all."

*In re Idleman's Commitment* (Ore.), 27 P.2d 305, 310 (1933):

"The sum exacted by this statute is not a tax but is mere payment for a service rendered by the state institutions."

Accord.: *State v. Bateman* (Kan.), 204 Pac. 682, 683 (1922).

[fol. 124] pitals to pay for or contribute to their support. This position proceeds, we are inclined to think from a *misconception* of the *real, paramount purpose* intended primarily by the legislature to be achieved by the establishment of state institutions for the care and maintenance of the insane. Of course, one of the purposes is no doubt to protect the citizens against the violent acts of such insane people as may be dangerous, and who, if at large, would likely be a menace to the lives, persons and property of the citizens. *But the principal purpose was and is to care for indigent insane, who in some cases may be successfully treated for the malady.* . . . The liability for their support [fol. 125] rests, as we have seen, upon a legal as well as natural duty, and their forcible detention *inures as much to their benefit and to that of relatives* obliged to contribute toward their care and support as to the state." (Emphasis added.) 7 Cal.App., 304-305.

So even a half century before it was accepted that mental illness cannot be equated with dangerous tendencies, one California court was prescient enough to grasp the real purpose and function of the state mental hospitals:

Certainly the court is correct in stating that some benefit accrues to the public from the incarceration of that handful of actually dangerous persons and from the "reclamation [of the person] as a productive member of society." (Opinion, p. 7.)

But the premise that mental hospitals are primarily for the public benefit and therefore the public should pay is fallacious. These hospitals treat the mentally ill with a view to effecting a medical cure. The primary beneficiary is the patient and his family. Thus it is not unreasonable to ask the immediate family to share the burden, if able.

Doubtless this is what the Circuit Court of Appeals had in mind in *Beach v. Government District Columbia*, 320 [fol. 126] F.2d 790, 793 (1963), *supra*, when it declared that public responsibility is not incompatible with private liability of specified family members.

A similar attitude was expressed by the Supreme Court of Oregon, which stated:

“It is evident that both the incompetent and his immediate relatives receive a very valuable service from the state . . . [T]he contributions made by the taxpayers *are for the benefit of the public*, while the sum paid in support of any particular inmate by himself or his relatives is for his personal benefit (Citations). The sum exacted by this statute is not a tax, but is mere payment for a service rendered by the state institutions.” (Emphasis added.) *In re Idleman's Commitment*, (Ore.) 27 P.2d 305, 310 (1933).

This court, only five years ago, said much the same thing:

“From time immemorial it has been the natural primary obligation of the parent to bear the financial burden of caring for an afflicted child. [In this case an adult.] In this humanitarian age the *state has assumed that obligation* in the *absence of the parent's* [fol. 127] *ability* to do so. This fact has not, however, entirely abolished the parental obligation. It has done so only to the extent provided by statute.” *Department of Mental Hygiene v. McGilvery*, 60 Cal.2d 742, 753 (1958). (Emphasis added.)

The finding of a benefit to society is not incompatible with individual liability. Streets can be paved over the protest of an abutting property owner. The public benefit and purpose may be clear, yet a charge can be assessed against those benefiting individually. Every fire regulation benefits the public, but the cost of compliance can be thrust on the property owner even if the cost is undoubtedly an economic hardship.

Hence, a modern concept of treating the mentally ill bolsters the reasonableness of retaining a time-honored obligation.

[fol. 128]

#### IV. The Department Has No Power to Create Economic Hardships for Either Patient or Relatives

Respondent has never contended and has consistently disavowed any power or right to “denude [the relatives]

of their assets in order to reimburse the state" (Opinion, page 11) in view of the express statement of section 6651 that ability to pay is the criterion for liability. The court must presume in absence of attack that the standards used by the Department in judging financial responsibility are reasonable. *McGilvery*, 50 Cal.2d at 760-1. Moreover, there is an additional safeguard. As this court made clear in *McGilvery*, *supra*, at 760-761, if the Department refused to cancel liability on a showing of the proper facts of inability to pay, such arbitrary action would be reversed by the courts.

Moreover, it must be remembered that the defendant is the estate of a deceased person and it is difficult to understand how such a person could be "denuded of his assets in order to reimburse the state." (Opinion, page 11) Insofar as the State's claim is viewed as being in opposition to the interests of the heirs, there is no apparent reason why the State as a creditor should have its rights considered inferior to those of other creditors who would be paid before the residue is distributed.<sup>22</sup> The court states that relatives who contribute to the patient's care have no right to recoup anything, presumably under any circumstances, from the assets of the patient. However, section 6650 expressly imposes a *joint and several* obligation and the law is very clear that there is a right to contribution of one joint and several obligor against another. (Civil Code § 1432)<sup>23</sup>

This rule of law has also been applied to situations where one relative paid for the support of an indigent parent and the other obligors, i.e., relatives, were also required to contribute<sup>24</sup> on this joint and several obligation. *Manthey*

<sup>22</sup> It must be remembered that here the administratrix is the sole beneficiary of the estate and also the guardian of the patient (Petition, pp. 3 & 4; C.T. 24). She will take the entire estate (after a \$100 bequest) if she can compel payment from her ward's assets.

<sup>23</sup> *Garcia v. Sup. Ct.*, 45 Cal.App.2d 31 (1941) is not *contra* because the liability was *several* only. The obligation under § 6650 is expressly joint and several and section 1432 of the Civil Code necessarily applies by its very terms.

<sup>24</sup> Of course, reading sections 6650 and 6655 together, one would have to conclude that the right of the joint and several obligors to



v. *Schueler*, 126 Minn. 87, 147 N.W. 824 (1914); *Wood v. Wheat*, 226 Ky. 762, 11 S.W.2d 916, 918 (1928). See *Mallatt v. Luihn*, 206 Or. 678, 294 P.2d 871, 882 (1956), stating contribution could be forced. See cases at 41 Am. Jur. [fol. 130] '689, Poor and Poor Laws, section 12. There is no reason why a recoupment or joinder against the estate of the patient could not be made on the same theory subject to the qualification in footnote 24. It is significant that no joinder was ever attempted here; rather we have the flat assertion that the Department could not sue anyone at all until it had impoverished the patient.

In a case where no attempt was made at collection while the decedent was alive, such language seems unjustified. Should a case arise in which a relative has been so "denuded" the courts can and should strike down such arbitrary action.

It is submitted, however, that the above demonstrates this could not arise, since: (1) the statute (section 6651) denies the Department the power to create economic hardships; (2) *McGilvery* says the agency's actions are subject to review for arbitrariness; (3) the Department disclaims any desire or power to impoverish any patient or relative; (4) in this case neither the appellant claims nor does the record support any showing that any persons have been "denuded of their assets." Why should the court presume otherwise absent a showing that the above premises are unfounded?

#### V. The Social Question of Free Mental Hospitals Is for the Legislature to Resolve; the Court Should Limit Itself to the Legal Question of Reasonable Classification

Respondent is aware of the fact that "the social evolution which has been developing during the past half century" (Opinion, page 10) may have convinced many forward-looking and intelligent people that an "expanded rec-

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obtain contributions from the patient would be tempered by the admonition of section 6655 that the patient must not be stripped of all his assets so as to leave him a burden upon society. The contributing relatives would have no greater right to impoverish the patient than would the Department of Mental Hygiene.

ognition of the *parens patriae* principle" (Ibid.) presages a time when the state will provide to all citizens medical treatment for both physical and mental ills. Equally intelligent people have opposite opinions. But when the social issue is put aside and only the legal issue of reasonable classification is examined quite different criteria must be utilized. Respondent submits that fairminded persons would agree that the equal protection clause does not require free hospitalization for mental illness any more than it.

"enact[s] Herbert Spencer's Social Statics . . . [A] constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the State or of *laissez faire*. It is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar or novel and even shocking ought not to conclude our judgment [on the constitutional question]." Justice Holmes dissenting in *Lochner v. N.Y.*, 198 U.S. 45, 75-76 (1905).

Indeed, equal protection is not denied

"unless it can be said that a rational and fair man necessarily would admit that the statute proposed would infringe fundamental principles as they have been understood by the traditions of our people and our law." (Holmes dissent, *ibid.*)

In the instant case this means that irrespective of the court's opinion in regard to the desirability of providing free care for the mentally ill, the only question the court may properly examine is the legal one involving reasonableness of a particular classification.

## VI. Policy Considerations.

Several policy considerations<sup>25</sup> should be considered by the court as bearing upon the question of whether the

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<sup>25</sup> Many of these policy considerations the court may feel should properly be directed to the Legislature rather than to the court. But because of the serious doubt whether there is any area left within which the Legislature can act, the respondent feels it must

[fol. 133] entire relative responsibility must be declared unconstitutional.

#### A. Problems of Dealing With the Indigent Aged

First, many of the patients the Department of Mental Hygiene is caring for are not actually mentally ill, but merely senile. Their problems are associated more with old age than with mental illness. For years the efforts of the Department have been directed toward discharging these people and preventing their initial commitment or voluntary admission, usually accomplished at the instigation of relatives. The Department has found that many children, from inconvenience or ingratitude, simply wish to "dump" their old and senile parents in the state hospitals, an expedient alternative to having them linger around the house, making demands, needing constant care and attention, and often causing social embarrassment. Previously the financial implications of committing a parent had some deterrent effect upon a family's decision to commit a senile parent. The court's decision making state hospitals free for most patients sweeps away the last barrier to using the hospitals as a dumping ground."

[fol. 134] The precise additional economic burden this will impose on the Department of Mental Hygiene and ultimately the taxpayers is difficult to assess, but it will undoubtedly be very great.

#### B. Economic Impact.

##### 1. State and Local Government.

All of the aspects of the economic impact of this court's decision cannot be quickly documented. Appendix "C"

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bring these problems to the court's attention as being relevant to the question of whether the entire relative responsibility law is unconstitutional or whether a narrower holding would still allow the Legislature to consider corrective action.

\* The Deputy Director of Hospital Services for the Department of Mental Hygiene "anticipate[s] a trend in the direction of increased admissions, increased readmissions and decreased releases because the economic advantages will outweigh the social and psychological responsibility." See Appendix page 3.

shows that the immediate revenue loss could be as high as \$6,000,000 a year depending upon the actual scope of the court's decision. Depending upon the court's view as to whether the decision is retroactive, many millions of dollars must be repaid by the state as being collected on an unconstitutional theory of liability. The expected increase in commitments of merely senile people has already been commented upon in the discussion of the expected need of additional hospital facilities. The expected influx of those from private mental sanitariums is discussed *infra*.

The financial difficulties this decision will cause the 58 counties of the state are also manifold. As an example, section 2576 of the Welfare and Institutions Code imposes liability on the spouse and adult children of the recipient for all county aid including the costs of county hospitalization. Some or all of this liability on the spouse and adult [fol. 135] children of the recipient for all county aid including the costs of county hospitalization. Some or all of this liability is now eliminated.

A rehearing ought to be granted simply to allow the counties to present fully prepared and documented briefs for the Court's consideration on how local governments will be affected. They too deserve their day in court, for which last minute amici curiae briefs are poor substitutes.

## 2. Private Hospitals and Homes for the Aged.

There can be no doubt the effect on private mental hospitals is going to be a serious one. This is a several-million-dollar business in California, and the only reasonable result of the court's holding here is that if state hospitals are free<sup>27</sup> most people will withdraw their relatives from the expensive private mental sanitariums and place them in free institutions. Likewise, adult children who are now caring for their parents at home, or financially supporting

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<sup>27</sup> Dr. Rapaport (Appendix B, page 2) points out the high quality of the state hospitals attract many persons whose relatives are well able to pay for private care and who are pleased to pay the state's reasonable charge. But it would be ignoring human nature to expect them to pay when the service is free.

them in homes for the aged can be expected to place them [fol. 136] in the very competent (and free) hands of the state.<sup>28</sup>

### C. The Effect of This Decision Upon a Sense of Family Responsibility

As a social question<sup>29</sup> many authorities have argued that part of the increase in crime and juvenile delinquency and other problems of modern society stem from the changing notions of family responsibility and of one member for the other. The court's holding that the members of the family may not be required to pay sums well within their means for the hospitalization care of each other further undermines this bond of family responsibility.

It is an oversimplification to point out that there is no *necessary* connection between the admonition of "Honor thy father and thy mother" (Exodus, 20:12) and the legal liability to pay hospitalization costs for one's parents. Law can be the *leader* in establishing the direction in which moral principles develop. This rationale is, at least in part, a justification for the current legal pressure in the race [fol. 137] relations area.<sup>30</sup> It must be remembered that the original concept advanced to uphold the imposition of this liability was the *moral obligation* of support which was "perfected" into a legal obligation. *State Comm. v. Eldridge*, 7 Cal.App. 298, at 304, 305 (1908); *Beach v. Govt. of Dist. of Col.*, 320 F. 2d 790, at 792 (1963); *People v. Hill*, (Ill.) 46 N.E. 796 at 798 (1896), and cases cited *supra*.

It follows, therefore, the elimination of this legal liability will *tend* to undermine a sense of family responsibility.

<sup>28</sup> See Appendix F, page 2.

<sup>29</sup> For the appropriateness of such a consideration see Opinion, page 10.

<sup>30</sup> See *Greenberg, Race Relations and American Law*, chapter 1, "The Capacity of Law to Affect Race Relations," 1959.

## VII. Rehearing Should Be Granted to Clarify Questions Resulting From the Court's Decision.

Rehearing should be granted in order that the court may modify its opinion to include clarification of the following:

1. Is the instant decision to apply retroactively or prospectively only?

Respondent urges the court to adopt a prospective application. The court has the power to do so; its decision in this respect "turns on considerations of fairness and public policy." (*Forster Shipbuilding Co. v. County of Los Angeles*, 54 Cal.2d 450, 459 (1960); cf. *Griffin v. Illinois*, 351 U.S. 12 (1955) [concurring opinion of Justice Frankfurter].) It is submitted that a prospective application [fol. 138] would best serve the public in that, (1) the taxpayers would be saved the expense resulting from a deluge of litigation for refunds; (2) the public would be saved the incalculable number of man-hours involved in re-examining old records and accounts.

2. Does the decision eliminate inter-spousal liability under section 6650?

This problem, although adverted to in the court's opinion (See Opinion, p. 5) is left unresolved. Since liability of a spouse can be laid on a ground independent and exclusive of constitutional considerations, i.e., the marriage contract (cf. Opinion, p. 5; see also dissent of Justice Schauer, *Dept. of Mental Hygiene v. McGilvery*, 50 Cal.2d 742, 766), it would appear that such liability may justifiably be preserved.

## Conclusion

Respondent submits that there are sound and compelling reasons why the instant statute should be upheld. An examination of the legal considerations leaves no doubt that within the meaning of equal protection, the classification here is reasonable. Respondent has not been afforded an opportunity to urge its position, and in all fairness it should now be permitted to confront the court and to present argument on a question of such great moment. In light



of changing attitudes respecting mental health, in light of the great economic and social impact of the court's decision [fol. 139], and finally, in light of our long history of recognizing obligations such as here involved, a rehearing should be granted.

Dated: February 14, 1964.

Stanley Mosk, Attorney General of California;  
Harold B. Haas, Assistant Attorney General;  
Elizabeth Palmer, Deputy Attorney General; John  
Carl Porter, Deputy Attorney General; Asher  
Rubin, Deputy Attorney General, Attorneys for  
Respondent.

[fol. 140]

APPENDIX A TO RESPONDENT'S PETITION FOR REHEARING

OPINION OF SUPREME COURT OF CALIFORNIA  
IN DEPARTMENT OF MENTAL HYGIENE V.  
KIRCHNER, FILED JANUARY 30, 1964—

(printed at p. 52, *supra*).

[fol. 141]

## APPENDIX B TO RESPONDENT'S PETITION FOR REHEARING

[fol. 142]

STATE OF CALIFORNIA

## MEMORANDUM

Date : February 6, 1964  
File No.:

To : Hon. Stanley Mosk, Attorney General  
State Building  
San Francisco, California

Atten : John Porter, Deputy Attorney General.

From : Agnews State Hospital  
San Jose

Subject: Activity Status of State Hospitals for  
the Mentally Ill and Mentally Retarded

Historically the operation of state hospitals has been considered as an essential function of government. This determination was consistent with the knowledge and thinking concerning the mentally ill as it prevailed many, many years ago. Nothing was then known concerning the causes of mental illness and in fact there was no belief that these conditions, then known as insanity, were illnesses at all. Some considered the manifestations of the so-called insane person to be related to sinfulness, some to criminality, and in some instances the insane person was pictured to be related to God or some other power for good or for evil. Thus it is easy to understand why there was a public demand that this type of person be isolated from society on the basis of the majority feeling that they were a danger and a menace.

The asylums created for these people were of crude but secure structure and largely manned by robust, active personnel who could better guarantee security. To these institutions mostly went the indigent, the friendless, and they went to the institution destined to spend the rest of

their lives in custody. The matter of treatment was not an essence because the condition was not considered to be due to any medical origin. As time went on, and especially late in the nineteenth century and early in the twentieth century, while there was no feeling that the insane were sick, yet there was a genuine movement toward more humane and kindly care, and the institutions continued to be primary custodial in nature. Gradually there entered into the picture some opinions that the causes of the conditions, at least in some cases, were medical. Soon the association of general paralysis of the insane with syphilis was recognized, and treatment instituted and a preventative program developed. Other conditions were recognized as being due to dietary disturbances and corrections of these conditions were instituted and the institutions developed a trend toward becoming hospitals rather than custodial asylums.

Over the centuries there were a few voices continuously raised indicating a belief that the insane were sick people, but it wasn't until the twentieth century that any organized activity appeared in support of a medical thesis. After World War I there appeared to be an upsurge of general interest, and especially medical interest, in the psychiatric conditions with the growing realization that they were medical in nature, but this became very pronounced just about the time of the onset of World War II or just prior to it. Psychiatry became a respectable branch of medicine, research into the causes of mental illness became activated, and for the most part throughout the world and notably [fol. 143] in California, there was general recognition of the fact that we have here a medical and a treatable problem rather than purely a custodial problem, and thus a treatment philosophy was substituted for the custodial philosophy. Up to that time persons with financial means would not come to a state hospital for the mentally ill excepting, in some few cases, in the terminal part of their illness. They preferred and did go to private facilities. As the treatment program became more and more activated, the prejudice against the state hospital lessened, and especially in the last two decades more and more finan-

cially independent people sought care and treatment in our public hospitals. Their confidence in our treatment program is supported by the fact that for the last ten years there has been a continuing reduction in the over-all population of our state operated psychiatric hospitals. This in spite of the fact that the over-all general population has continually increased to the number of ten or eleven hundred a day and the admissions to our state hospitals for the mentally ill have continually increased and our death rate remains relatively low and amongst the lowest when compared to other states. During this last ten years there has been a marked increase in the numbers as well as the competency of the staffing of our hospitals and clinics. Two institutes have been put into operation, the first being started just before World War I began and the second somewhat later. These neuropsychiatric institutes, one associated with the medical school of the University of California in San Francisco and one with the University of California medical school at Los Angeles, are actively engaged in research and treatment as well as education and training of psychiatrically minded individuals. An excellent and very active research program operates in our Department of Mental Hygiene, and our patients receive as good care and treatment as is to be found in the best private facilities.

Thus it is no surprise that many persons so financially fixed that they could afford to go to the best private institutions, costing four or five times as much as the maximum rates charged by the State for care in a public institution, and who theretofore went to these private institutions and shunned the public institutions, now for the last fifteen to twenty years have, in ever-increasing numbers, come to the state hospital for treatment. They have found, after experience in private institutions, that, in their case, frequently better results were obtained, insofar as improvement and recovery is concerned at the public institution, than they experienced in the private institution. In all fairness it must be stated that the reverse has also proven true in some cases, and persons who apparently did not do so well in the public institution did better when placed in

a private institution where they also received excellent treatment.

The releases from our public hospitals operated by the Department of Mental Hygiene compare favorably with those of any other part of the country and I do not believe there is any question but this excellent release picture is due to the improved and ever-improving treatment program afforded in our state hospitals. It should be mentioned here that the care and treatment provided is not dependent on whether or not a person pays or how much they pay for their care. In my own experience the majority of people who do pay are willing and anxious to pay for the type of care and treatment afforded at our state hospitals.

With the trend away from custody toward treatment, there has also developed the realization that by and large the mentally ill cannot be considered as dangerous to society. It has been established by scientific studies that people who [fol. 144] have been in our hospitals or who are in our hospitals, commit less crimes of violence when compared to the general population than do those who have not been in our hospitals or are not in our hospitals, and so the traditional concept that the mentally ill must be isolated and secluded in hospitals for the protection of society must be re-examined, and when it is carefully and thoroughly re-examined, I am sure that it will be concluded that we are no longer justified in retaining that concept.

Also, with this change in trend from custody to treatment, there has been a decided change in the construction of our hospitals. Excepting for the maximum security hospital at Atascadero, there are few if any wards remaining in our other hospitals which can be considered as secure, if the philosophy of danger is retained. Our patients have a great deal of freedom, many privileges, and as they improve the freedom and privileges increase until the patient is released to the community. Be it remembered that even at the maximum security hospital they have an active and meaningful and productive treatment program and many of their patients are released with an ever-decreasing rate of return. In the state hospitals for the treatment of the

mentally ill in California, with the exception of the maximum security hospital, there are no longer heavily barred windows and greater than household secure door locks, and many of the doors are not locked at all. Restraint is notably on the decline in our hospitals.

During this development of the treatment program there have been ever-increasing wards developed in our private general hospitals for the care and treatment of psychiatric cases.

Therefore, in summary, I would say that in our California state hospitals for the mentally ill during the past twenty to twenty-five years there has been an ever-increasing treatment program. There has been a continuing and very excellent research and training program involving our neuropsychiatric institutes and clinics and our hospitals as well as the extramural aspects which have been developed over the past twenty-three or twenty-four years. Our facilities are no longer constructed with the idea of custody and security, but have been designed for the carrying out of an active treatment program.

Therefore, in conclusion, I would state as my professional opinion, backed by over forty years in state, private, federal and military experience, that we must now conclude that we should no longer be considered as custodial institutions, but rather as treatment, training, educational, and research activities. While it is dangerous to attempt to look into the future, nevertheless I prophesy that if our present programs and trends are permitted to expand and develop in the unrestricted and scientific manner prevalent in the past several decades, that we can look forward to the time when the incidence of mental illness will be reduced and the periods of hospitalizations necessary for the treatment of those cases which do arise will be considerably shortened.

Finally, in the hope that this improvement will be allowed to continue, and in the belief that there will be an ever-increasing number of people financially able to pay for [fol. 145] the treatment and who are willing and anxious to receive such treatment, I believe those people who are



able to pay without hardship should be allowed the privilege of contributing to the cost of the care they receive.

/s/ WALTER RAPAPORT

Walter Rapaport, M. D.  
Superintendent & Medical Director

WR:k

[fol. 146]

APPENDIX C TO RESPONDENT'S PETITION FOR REHEARING

STATES HAVING STATUTES SIMILAR TO CALIFORNIA  
WELFARE AND INSTITUTIONS CODE SECTION 6650

<i>State:</i>	<i>Citation to Statute</i>
Alabama	Code of Ala., Tit. 45, § 257 (1958)
Alaska	Alaska Stat. § 47.30, 270 (1962)
Arkansas	Ark. Stats. (1947) 59-230
Colorado	Colo. Rev. Stats. (1953) Art. 1, Chap. 71, § 15
Connecticut	Conn. Gen. Stats. (1945) Chap. 119, § 2663
Delaware	Del. Code Chap. 51, Tit. 16, § 5127
Idaho	Idaho Code, § 66-354
Illinois	Ill. Ann. Stat. Chap. 91½, § 9-19
Indiana	Ann. Ind. Stat. Tit. 22, § 401(a)
Iowa	Iowa Code Ann. § 230.15 (1946)
Kansas	Kan. Gen. Stat. (1957 Supp.) Chap. 59, § 2006
Kentucky	K.R.S. (1955) 203.080
Louisiana	La. Rev. Stat. § 143 et seq. (1952)
Maine	Rev. Stats. Man., Chap. 27, § 135 (1954)
Maryland	Md. Code Ann. (1957) Art. 59, § 5
Massachusetts	Ann. Laws Mass. (1957) Chap. 123, § 96
Michigan	Mich. Stats. Ann. (1956) Chap. 127, Art. 14.816
Minnesota	Minn. Stats. (1953) § 526.01
Mississippi	Miss. Code (1942) § 6909-13
[fol. 147]	
Montana	Rev. Code Mont. (1957 Supp.) Tit. 38, § 214

<i>State:</i>	<i>Citation to Statute</i>
Nebraska	Neb. Rev. Stats. (1943) § 83-352
Nevada	Nev. Rev. Stats. 433.370
New Hampshire	N.H. Rev. Stats. Ann. (1955) § 8.41
New Jersey	Rev. Stats. N.J. (1937) 30:4-66
New York	Consolidated Laws N. Y. Mental Hygiene Law, § 24, subd. 2
North Carolina	Gen. Stats. N.C. § 143-121 (1958)
North Dakota	N.D. Century Code § 25-09-04 (1963)
Ohio	Ohio Rev. Code (1957 Supp.) Tit. 51, § 5121.06
Oregon	Ore. Rev. Stats. (1955 Supp.) §428.101
Pennsylvania	Penn. Stats. Ann. Tit. 50, § 1361
Rhode Island	Gen. Laws R.I. (1956) § 26-3-17
South Carolina	Code of Laws, S.C., § 32-1028 (1962)
South Dakota	S.D.C. § 30.01A06 (1960)
Tennessee	Tenn. Code § 33-629
Texas	Tex. Ann. Stat., Art. 3196A (1952)
Utah	Utah Code Ann. § 64-7-6 (1953)
Vermont	Vt. Stats. (1947 Rev.) Chap. 281-6679
Virginia	Code of Va. (1956) § 37-125.1
Washington	Rev. Code of Wash., § 71.02.230
West Virginia	Code W. Va. § 2672
Wisconsin	Wis. Stats. Ann. § 52.01 (1953)
Wyoming	Wyo. Stats. § 25-81 (1963)

[fol. 148]

APPENDIX D TO RESPONDENT'S PETITION FOR REHEARING  
 PHOTOGRAPHS OF AND DESCRIPTIVE MATERIAL RELATING TO  
 STOCKTON STATE HOSPITAL

CALIFORNIA

MENTAL

HEALTH

PROGRESS

**KEEP OUT**

JANUARY 1964

JANUARY 1964

**KEEP OUT**

Twilight Days of a Relic

PAGE 3

[fol. 149]



[fol. 151]

*Doomed for demolition, vacant building at Stockton State Hospital symbolizes a less-enlightened era in treatment of mental disorders.*

# The Pride of Its Day

SEE NEXT PAGE



4

**S**TOCKTON STATE Hospital's ancient men's building, often compared architecturally with a bastille or prison, is scheduled for demolition, probably in 1964. The building no longer housed patients after 1958; until 1962, it was used for administrative offices.

This vacant structure, with barred windows, towers, and somber interiors has a somewhat macabre atmosphere, in the opinion of many contemporary observers. However, it apparently owes this atmosphere at least partly to the contrast it presents to the light, airy, and imaginative structures created by many modern architects. To people of its early times, the men's building evidently was close to the last word in mental hospital design.

A report made not long after completion of the building in 1885 declares:

"While it is unpretentious in design and free from superfluous orna-

---

*COVER: Padlocked doors guard entrances to Stockton State Hospital's ancient men's building, now vacant and slated for razing.*

---

mentation, there is nothing prisonlike in its appearance. On the contrary, it is cheerful looking, its outlines strikingly graceful. It may be doubted whether there is any state building, outside of the Capitol, that exceeds it in beauty and symmetry or which in general leaves a more pleasing impression on the beholder.

"In internal arrangement it presents a successful embodiment of the most approved features of asylum construction . . . If the diseased mind responds to its environment, and we know such to be the case, the change from the low dismal, forbidding premises the patients formerly inhabited,





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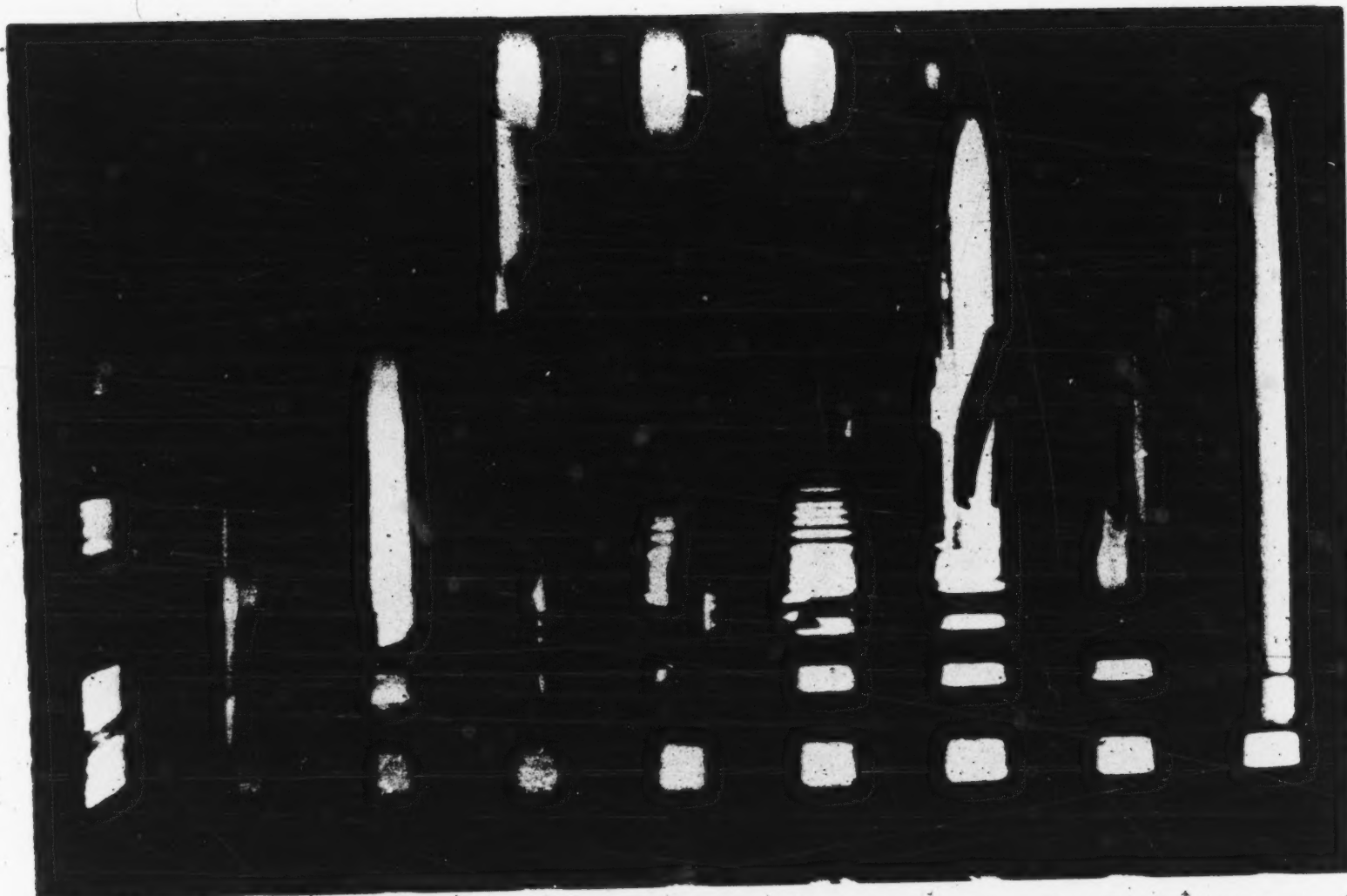
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"In internal arrangement it presents a successful embodiment of the most approved features of asylum construction . . . If the diseased mind responds to its environment, and we know such to be the case, the change from the low dismal, forbidding premises the patients formerly inhabited, to these spacious, well-appointed rooms and dormitories, has in itself been a curative agent to an extent impossible to realize . . ."

All of which goes to show that in architecture, as in other fields, many things are relative.



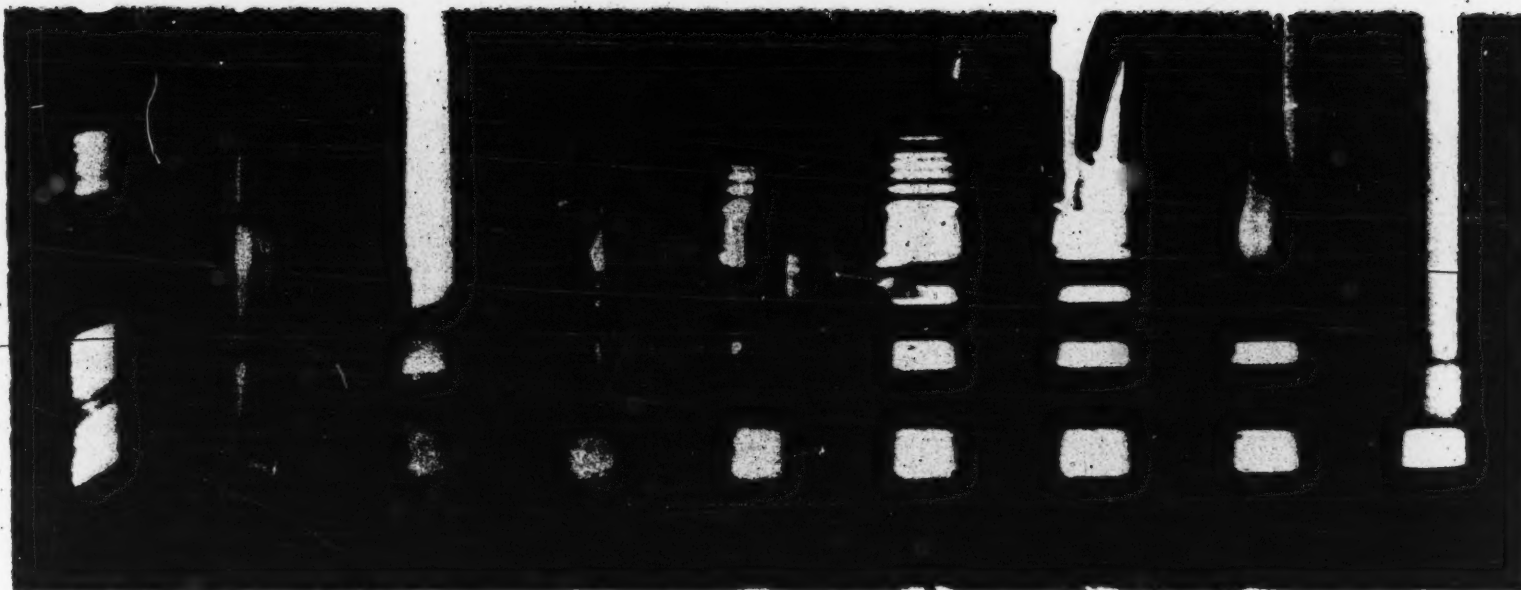
*Climbing ivy fails to soften prisonlike effect of barred windows on Stockton State Hospital's old, unused men's building, scheduled for early demolition.*



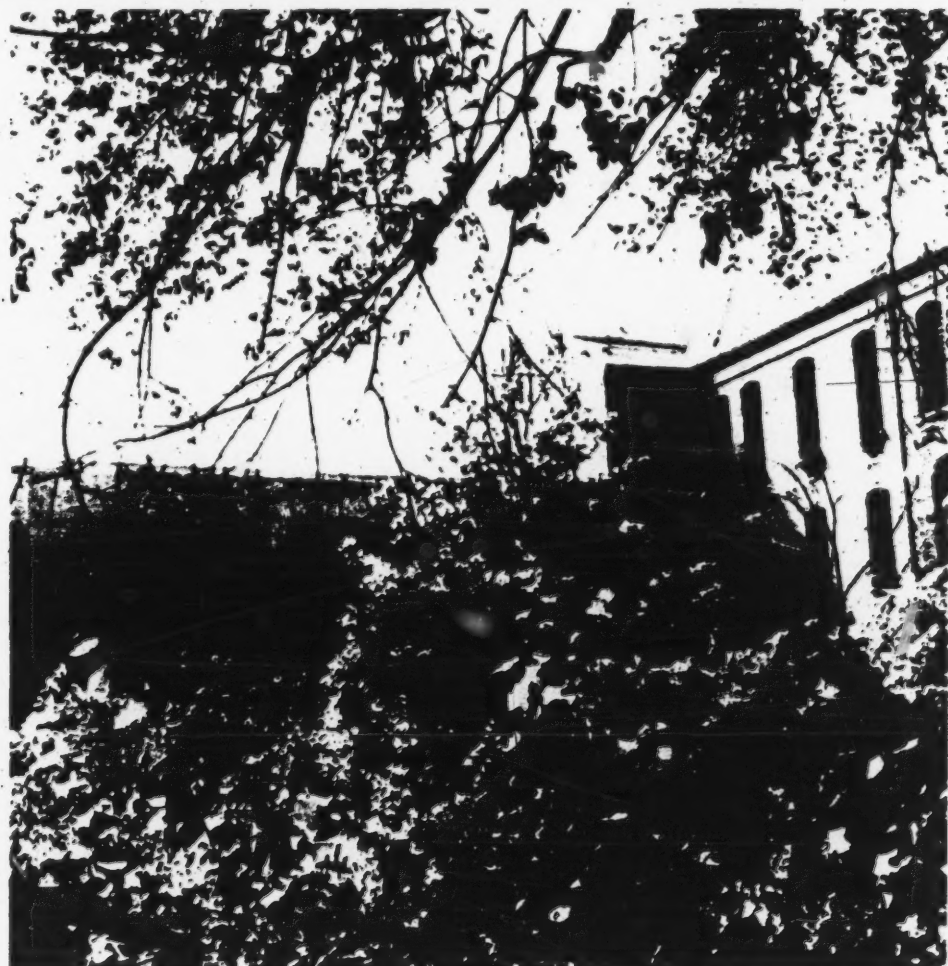
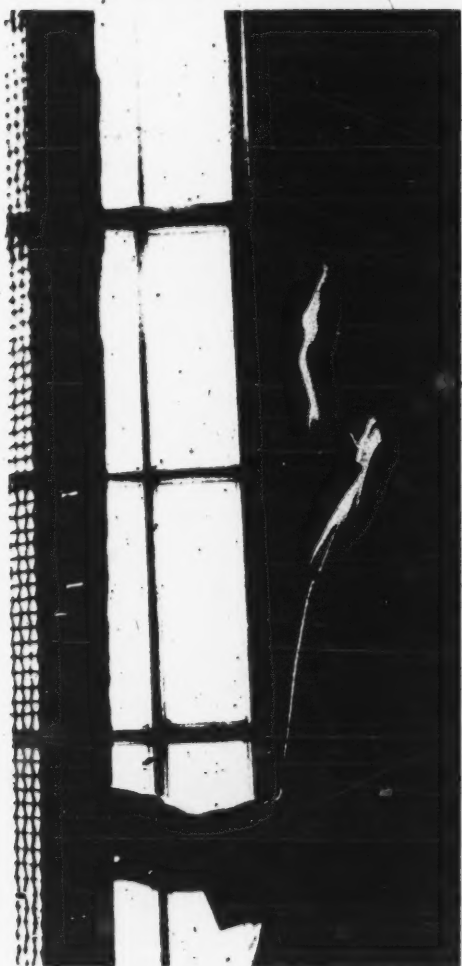
*Above, mental hygiene department officials explore dusty corridors in old men's building, Stockton State Hospital. Lower left, view through heavily screened window reveals, lower right, old recreation yard now invaded by dense vegetation.*







*Above, mental hygiene department officials explore dusty corridors in old men's building, Stockton State Hospital. Lower left, view through heavily screened window reveals, lower right, old recreation yard now invaded by dense vegetation.*



[fol. 153]

[fol. 155]

## APPENDIX E TO RESPONDENT'S PETITION FOR REHEARING

[fol. 156]

## AFFIDAVIT

I, Paul Downard, Chief of the Bureau of Patients' Accounts of the Department of Mental Hygiene of the State of California hereby certify:

That I am the legal keeper of the record of collections of accounts for care, support and maintenance rendered patients in hospitals under the jurisdiction of the California Department of Mental Hygiene.

Based on these records, I estimate a 12 month's revenue from the sources listed below to be \$5,526,824—

Collections from parents for adult children	\$1,080,054
Collections from children for parents	893,586
Collections from spouse	1,509,272
Insurance collections (for spouse & minor children)	2,043,912
Total	\$5,526,824

In addition, there are now on the ledgers secured accounts amounting to \$818,165 and detailed as follows:

Secured accounts (from parents & children)	\$ 452,157
Secured accounts (from spouse)	366,008
Total	\$ 818,165
Grand Total	\$6,344,989

/s/ PAUL DOWNARD  
 Paul Downard  
 Chief  
 Bureau of Patients' Accounts  
 Department of Mental Hygiene

STATE OF CALIFORNIA     )  
                                       )  
 COUNTY OF SACRAMENTO    )

Subscribed and sworn to before me this 7th day of February, 1964.

/s/ EULA SAVAGE  
 Notary Public in and for the County of  
 Sacramento, State of California.

[fol. 157]

APPENDIX F TO RESPONDENT'S PETITION FOR REHEARING

[fol. 158]

State of California

Department of Mental Hygiene

Date: February 5, 1964

MEMORANDUM

To:

Honorable Stanley Mosk  
 Attorney General  
 Department of Justice  
 Library and Courts Building  
 Sacramento, California

From:

/s/ E. F. GALIONI  
 E. F. Galioni, M.D.  
 Deputy Director  
 Hospital Clinical Services

Subject:

*California Supreme Court Decision in the Kirchner Case  
 Effects on the Department of Mental Hygiene Clinical  
 Program*

It is our considered opinion that the recent California Supreme Court Decision in the Kirchner case will have an adverse effect upon the clinical program of the Depart-



ment of Mental Hygiene. Its influence upon clinical operations is based upon the premise that:

The economic advantage gained through the absence of legal financial responsibility will impair the utilization of certain family social and psychological resources in achieving the most appropriate treatment and care for the patient.

The decision will affect primarily the following groups of patients:

1. Persons over 65 years of age who are suffering from diseases of the senium or manifesting beginning signs of senility.
2. Mentally ill persons old enough to have adult children upon whom they are either totally or partially dependent.
3. Adult persons suffering from mental illness or mental retardation who are still dependent upon their parents.

The decision will have an effect upon:

A. *Admissions to state hospitals.*

1. Pressures for admission will be increased. Admissions to state hospitals will be sought by relatives for patients now being cared for adequately at home. Economic reasons will play a more important role in these requests.
2. Admissions will be sought for patients now being cared for in private nursing or medical facilities at rates comparable to those of our state hospitals, again for economic reasons.

[fol. 159]

3. Admissions to directly operated state facilities will be sought both by the county and by relatives for patients now confined in county nursing or medical facilities where the county can expect even less reimbursement by certain relatives than it now has.

4. Admission to a state hospital might become preferable to local treatment programs. The economic advantage to the family might outweigh the accepted principles of sound psychiatric practice. For example, 24-hour hospitalization in a large facility miles from home might be preferred to day treatment in a community psychiatric facility close to the family and more in keeping with the patient's social and psychological needs, purely for economic reasons.

#### *B. Releases from State Hospitals*

A decrease both in indefinite leaves and discharges of patients affected by the Supreme Court's decision is anticipated.

1. It will be more difficult to return such patients who have received maximum benefit from hospitalization to their family. This difficulty will result primarily from the added economic burden placed upon the family when the patient is released.
2. We have been placing patients in private medical facilities at the expense of responsible relatives when these private facilities can offer equal or more appropriate nursing and/or medical care than the state hospital at a comparable cost. This method of release will become highly improbable because of the increased economic burden upon the family.
3. We have been returning patients to county medical and/or nursing facilities when county medical care is more appropriate for the patient. In some instances it has been possible for the county to obtain reimbursement for their cost of care by the family. This procedure will be greatly impaired if the county's reimbursement is decreased further.
4. It will be necessary to rely upon categorical aid programs such as AND and MAA than family resources for release of patients from our hospitals.

### C. Readmissions

Readmissions to our state hospitals will probably be increased. We anticipate that there will be a decreased family tolerance to working out problems with the patient on leave in the home. We anticipate earlier and at times unnecessary return of the patient to the hospital as a result of the combination of this decreased tolerance and the increased economic burden to the family.

[fol. 160] \*At this time it is not possible to quantify the above effects; however, we anticipate a trend in the direction of increased admissions, increased readmissions and decreased releases because the economic advantages will outweigh the social and psychological responsibility.  
EFG:td

[fol. 161]

#### APPENDIX G TO RESPONDENT'S PETITION FOR REHEARING

Excerpted Material From Gregory, *Psychiatry*,  
W. B. Saunders Co., London, 1961

[fol. 162]

#### THE HISTORY OF THE TREATMENT OF PERSONS WITH MENTAL DISORDERS

PRIMITIVE ANIMISM AND ITS CONSEQUENCES. There is a popular misconception that primitive societies have frequently accorded an exalted status to the mentally defective and insane. Not infrequently the mentally deranged have been treated well in primitive societies, but Linton has pointed out that they are usually regarded with fear and considerable awe, and that they are never liked, admired or given high social status. The treatment accorded to affected individuals may be related to primitive beliefs in some animating principle (such as the psyche or soul) that possesses and controls the body. Sometimes it has been thought that the mentally deranged were possessed by a god, sometimes that they were possessed by a devil or a witch, and sometimes that their souls had left their bodies and were wandering elsewhere. The belief in pos-

session by a devil or witch may lead to violent attempts at exorcism or driving out the evil spirit, while the [fol. 163] "missing-soul hypothesis" provides an excellent sanction for euthanasia (killing the person so that his body may rejoin the wandering soul).

Ancient Greek poetry and mythology record episodes of frenzy affecting the heroes, and early Egyptian papyri contain some references to mental disturbances. More specific accounts of mental disorder are contained in the Books of the Old Testament, Saul, David and Nebuchadnezzar being cited as examples. Epileptic convulsions were long recognized and known as the "sacred disease," but Hippocrates remarked that epilepsy appeared to him in no way more divine ~~nor~~ sacred than other diseases, but that it had a natural cause. "If you cut open the head," he remarked, "you will find the brain humid, full of sweat and smelling badly. And in this way you may see that it is not a god which injures the body, but disease."

In Sparta, under the laws of Lycurgus, those that were born mentally defective probably shared the fate of other weakly infants who were allowed to perish from exposure or were thrown into the river Eurotas. There were also ancient Roman laws providing for the killing of malformed or weakly children, although defectives were tolerated in Rome if they had value for amusement or diversion. An early reference to the care of the insane is contained in Plato's *Republic*, to the effect that they should not be seen openly in the city, but that their relatives should be responsible for watching over them at home as well as they could. The advent of Christian humanitarianism tended to improve the status of the mentally disordered in Europe, but superstitious beliefs in witchcraft and demoniacal possession remained. Treatments included dungeons, chains, starvation, flogging and various primitive forms of shock treatment (such as sudden immersion or lowering the patient into a pit full of snakes), venesection, innumerable drugs, hot baths, prayers, incantations and various attempts to amuse or interest the patient.

Early in the fourteenth century (in the reign of Edward II) legislation appeared in England providing for the

management of an idiot\* or "born fool" (*fatuus naturalis*) and of his estate. A defective was at that time distinguished from an insane person, whose mental capacity could fluctuate (*non compos mentis sicut quidam sunt per lucida intervalla*), and it was provided that the property of lunatics should be vested in the Crown. The first place in [fol. 164] Britain to care for the insane was the priory of St. Mary of Bethlehem in London where six lunatics were confined in the year 1403. It remained a priory until it was granted to the laity by Henry VIII in 1546, and it was not until 1632 that a medical man (Crookes) was appointed governor. It was approximately two hundred years later than this that the first asylum in England to care for defectives was founded at Park House, Highgate.

During the seventeenth century, early settlers in the American colonies believed the "distraught" and "insane" to be possessed by demons, the devil or witches, and regarded them with fear and treated them accordingly. Hollingshead and Redlich (1958) give the following account of the care of the mentally ill in the state of Connecticut at the time. "Often they created civil disturbances and were driven from their homes and towns or jailed along with beggars and criminals. The family of any person mentally ill was legally responsible for his care. Where a family was able to keep a deranged member at home, the sick person was locked and often chained in a barred room. When the family would not or could not care for its 'insane' member, he was placed under the control of the King's peace officers. When the King's officers were forced to intervene, the individual was taken to jail. If witchcraft was suspected, torture and occasionally hanging followed."

During the eighteenth century, it became generally recognized that "idiots" and "distraught persons" were different from ordinary delinquents. Those without family, friends or money became a charge upon the community of birth or residence, which tried to avoid such responsibility in two ways—either by abandoning the insane person in another town (usually at night) or by sale of the person at an annual auction to the lowest bidder (who tried to

use him as labor on his farm). During the latter part of the eighteenth century, the indigent insane came to be admitted to the workhouse, which was a combination "poor-house" and jail operated by the city and designed to accommodate a variety of persons such as the following: "... rogues, disorderly persons, all runaway stubborn servants and children, nightwalkers, pilferers; all persons who neglect their callings, misspend earnings and do not provide for their families; and all persons under distraction, unfit to be at large and not cared for by their friends or relatives." The overseer of the workhouse was employed to "punish with fetters and shackles and by whipping on the naked body not more than ten strikes at a time, or with close confinement without food or drink," those who did not follow his orders.

**HUMANE REFORM AND ABOLITION OF RESTRAINT.** Modern concepts of the care and treatment of mental illness are usually considered to have arisen in France and are associated with the names Pinel and Esquirol. In 1792, Pinel, a physician at the Bicêtre Hospital, was given a free hand by the Revolutionary Commune, and immediately liberated more than fifty patients, some of whom had been in chains for thirty years. He believed that the latter had been unmanageable only because of the treatment they had received, and this view was borne out by the results of his action. Esquirol succeeded Pinel at the Salpêtrière in 1810 and made further extensive reforms in the housing and management of the mentally ill throughout France.

In America, the Quakers of Philadelphia set aside special cells for housing the mentally ill in the cellar of the Pennsylvania Hospital which was opened in 1756. Twenty years later the Virginia legislature became the first in this country to vote public funds to help in building a hospital devoted exclusively to the insane. The second hospital in America built especially for the mentally ill was the Friends Asylum at Frankfort, Pennsylvania, which was opened in 1817 by the Philadelphia Society of Friends. Other mental hospitals were built, and in 1841 the Pennsylvania Hospital became the first general hospital in this country to erect a wing for the care of the mentally ill.



However, during the first half of the nineteenth century, many people continued to associate insanity with pauperism, and the mentally ill frequently continued to be confined in poorhouses under unfortunate conditions.

Reforms in the care of the mentally ill in America are often associated with the names of Benjamin Rush (1745-1813) and Thomas Kirkbride (1809-1883). Another important motive force behind many reforms in both America and Europe was a retired school teacher from Boston, Dorothea Lynde Dix (1802-1887). She became "shocked" by what she had seen of the neglect and maltreatment of mental patients, and succeeded in stimulating governmental [fol. 166] agencies in the United States and elsewhere to provide new and improved facilities for the care of the mentally ill. She has been credited with having been directly responsible for creating or extending the facilities of a total of thirty-two hospitals.

**MENTAL HOSPITAL AND COMMUNITY PSYCHIATRY.** In addition to improved accommodations and custodial care for the insane, the second half of the nineteenth century saw greatly improved medical interest in the investigation of mental disorders. Various physicians described isolated psychiatric syndromes, and these were systematized and classified by Emil Kraepelin (1856-1926). Kraepelin and many of his contemporaries believed that all mental disorders resulted from organic brain diseases (frequently hereditary in origin), and the search for brain lesions by men as Wernicke and Alzheimer resulted in the differentiation between organic mental disorders (having observable brain lesions) and "functional" mental disorders (in which no such abnormality of the brain could be discovered).

The end of the nineteenth century also saw the publication of Sigmund Freud's studies on hysteria, the development of the method of investigation which he termed psychoanalysis, and the application of this method to the retrospective study of the childhood experiences and relationships of adults with neuroses.

The early years of the twentieth century saw attempts at integration of these very different types of information by such men as Eugen Bleuler (1857-1939) of Zurich, Switzerland, and Adolf Meyer (1866-1945) of Johns Hop-

kins University, who developed a system of psychobiology. The essential features were (1) the unity of body and mind, (2) the necessary combination of psychological and biological aspects in all causes of mental illness, and (3) the uniqueness of the individual patient. The latter viewpoint was influential in developing what has come to be known as *dynamic psychiatry*, involving the study of emotional processes, their origins and the mental mechanisms. In contrast, the older nosological or *descriptive psychiatry* is based on the study of readily observable external factors (as formulated by Kraepelin).

As a result of his experiences as a patient in three mental [fol. 167] hospitals (private profit-making, private non-profit making and a state hospital), Clifford Beers wrote a book in 1908 entitled *A Mind That Found Itself*, designed to impress the public with the need for reform in the care of the mentally ill. The same year he was successful in forming the Connecticut Society for Mental Hygiene, and the following year the National Committee for Mental Hygiene was established, which later became one of the parent bodies of the National Association for Mental Health. The mental hygiene movement was material in helping to establish facilities for early out-patient treatment of adults and children with psychiatric problems. The main method of treatment employed in these facilities was psychotherapy. Concurrently, a variety of empirical somatic methods of treatment were introduced in the mental hospitals (e.g., the malaria treatment of general paresis, insulin coma treatment, brain surgery, Metrazol and later electroconvulsive therapy, and a variety of drugs with sedative or stimulant properties).

The years since World War II have been characterized by a greatly increased acceptance of psychiatry in medical teaching and practice, the establishment of psychiatric units in general hospitals (to which universities largely transferred their affiliation), marked expansion in the numbers of psychiatrists engaged in private practice, and the development of a variety of other community resources for the out-patient treatment of patients with psychiatric disorders.

[fol. 168] [File endorsement omitted]

[fol. 169]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

S.F. 21349

[Title omitted]

APPELLANT'S REPLY TO RESPONDENT'S PETITION FOR A REHEARING AND ANSWER TO AMICI CURIAE—Filed February 24, 1964

City and County of San Francisco

Honorable Byron Arnold, Judge

*To the Honorable Phil S. Gibson, Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the State of California:*

Appellant replies to the petition of respondent and the briefs of Jack M. Merelman, Legal Counsel, County Supervisors Association of California, Spencer M. Williams, County Counsel, County of Santa Clara, and California Association of Nursing Homes, Sanitariums, Rest Homes, [fol. 170] and Homes for the Aged, Inc. as follows:

I. The Holding of This Court Appertains Only to Persons Who Have Been Committed and Are Incarcerated.

One thing that petitioner and Amici Curiae have in common is that they fail to understand that this Court in the case of *Department of Mental Hygiene v. Hawley* (1963) 59 Cal.2d 247 and in its decision herein was talking about patients of the state hospitals who were committed thereto. These patients are in fact incarcerated, and they must obtain a discharge from the medical superintendent before they can be released. (Welf.C. 6728-6735.) These are people who were committed and incarcerated for the benefit of themselves and the public. As stated at 27 Ops. Cal. Atty. Gen. 376, 377:

"It is a fundamental concept derived from the common law that the insane (section 5041) defines 'insane' to mean 'mentally ill') are considered wards of the State which has a duty to protect them and their property as well as to protect the public from their unreasoned acts." (Citing cases.)

Respondent and the other moving parties argue that the Court's decision would make state hospitals free institutions, and that the facilities of the state for the insane would be used as a dumping ground for all of the mentally ill including the harmless senile. But this is not what counsel for respondent previously said. At 34 Ops. Cal. Atty. Gen. 313, 315 it is stated as follows:

[fol. 171] "It is our opinion that nonpsychotic seniles as defined *supra* are within the scope of section 5040, and are 'mentally ill persons.' With the exception that the nonpsychotic senile may not be committed to a state mental hospital (sections 5102 and 6733 specifically prohibit the admission and require the discharge of those affected with harmless, chronic, mental illness) the other commitment provisions of chapter 1, part 1, division 6, are applicable. These include commitment to licensed sanitariums, hospitals other than a state mental hospital, or other suitable facility (section 5100(a)), or to a counselor in mental health (section 5076)."

Moreover, the superintendent of a state hospital can discharge any committed patient who is still ill but whose discharge is not considered detrimental to the public welfare or injurious to the patient. Welf.C. 6730 reads as follows:

"The superintendent of a state hospital, on filing his written certificate with the Director of Mental Hygiene, may discharge as improved, or may discharge as unimproved, as the case may be, any patient who is not recovered, but whose discharge, in the judgment of the superintendent, will not be detrimental to the public welfare, or injurious to the patient."

Presumably the committed person in the case before this Court did not fall into the category mentioned in Welf.C. 6730, because though she had Eleven Thousand Dollars (\$11,000.00) in her guardianship estate, the superintendent did not see fit that she be released. Had the incompetent, [fol. 172] fallen into the category mentioned in Welf.C. 6730 her guardian could have placed her in one of the facilities of California Association of Nursing Homes, Sanitariums, Rest Homes, and Homes for the Aged, Inc. or any place else that her guardian could select with the approval of the Court.

The placement of wards by guardians is covered in Prob.C. 1500 which states in part as follows:

" . . . . The guardian of the person of a ward may fix the residence of the ward at any place in the state, but not elsewhere without the permission of the court."

This subject is also covered at 34-Ops. Cal. Atty. Gen. 312, 316 where it is stated:

"The guardian's power to choose the residence of the ward including a sanitarium or rest home is restricted to the extent that the guardian's actions must be for the best interests of the ward and are subject to review by the court which has jurisdiction over the guardianship. There are also statutory limitations on the guardian's freedom to make a placement of his ward. These relate to the type of placement desired as discussed below. We find no provision in the Welfare and Institutions Code permitting the guardian alone, or with the approval of the Probate Court, *to place the ward in a state hospital.*" (Italics ours.)

[fol. 173]

## II. Hawley Is Dispositive of the Case Before the Court.

*Department of Mental Hygiene v. Hawley* (1963) 59 Cal.2d 247, is dispositive of the issues of this case before the Court. In *Hawley* the incompetent was committed under P.C. 1638. Welf.C. 6650 reads in part as follows:

" . . . . The liability of such persons and estates shall be a joint and several liability, and such liability shall

exist whether the mentally ill person or inebriate has become an inmate of a state institution pursuant to the provisions of this code or pursuant to the provisions of Sections 1026, 1368, 1369, 1370, and 1372 of the Penal Code." (Italics ours.)

In other words the liability imposed in the *Hawley* case was of the same source as the liability imposed in the case before the Court.

Respondent cites *Kough v. Hoehler* (1956) 413 Ill. 409, 103 N.E.2d 177, for the proposition that the two types of commitments should be handled differently. It is true that they are handled differently in the State of Illinois, because in Illinois the act under question in the *Kough* case "excludes from its provisions mentally ill persons who are in custody on a criminal charge." However, in this state the Legislature has declared in Welf.C. 6650 that both types of commitments should be charged and the liability imposed in the same manner. When this Court declared that this state could not constitutionally charge *Hawley* for his son's commitment under Penal Code 1368, the Court in [fol. 174] effect declared that no relative of any mentally ill person committed and incarcerated in a state institution under the Welfare and Institutions Code or the Penal Code could be held liable under Welf.C. 6650.

### III. Welfare and Institutions Code 6650 Does Not Meet the Fairness Required by the Constitution of the United States or This State.

At page 8 of the brief of Jack M. Merelman, the County Supervisors Association of California contends that Welf.C. 6650 is a fair law "from our American ideal of fairness," and respondent evidences this fairness by proclaiming at page 31 of its brief as follows:

"\* \* \*. However, section 6650 expressly imposes a joint and several obligation and the law is very clear that there is a right to contribution of one joint and several obligor against another. (Civil Code § 1432.)"



Let us examine this supposed right of contribution and respondent's concept of fairness that follows therefrom.

C.C. 1432 reads as follows:

"A party to a joint, or joint and several obligation, who satisfies more than his share of the claim against all, may require a proportionate contribution from all the parties joined with him."

Let us set up a hypothetical case where a mother is committed to a state hospital. She has three adult sons all [fol. 175] living in California, and their names are A, B, and C. A is required to support the mother under Welf.C. 6650. B and C are not pursued by the Department because of their poor financial circumstances. Nevertheless, as we read Welfare and Institutions Code are not B and C also liable for the support of the mother, and if that is true, A should be able to sue B and C for their proportionate contribution. Finally, since it is a debt for necessities of life, B and C would not be entitled to a claim of exemption under C.C.P. 690.26, and A could satisfy his judgment out of the earnings of B and C up to Fifty Percent (50%) thereof in spite of their poor financial circumstances.

Now, if the mother is discharged before A decided to proceed, he could sue the mother as well for her share, but the Department is quick to point out in footnote 24 at page 31 of their petition as follows:

"Of course, reading sections 6650 and 6655 together, one would have to conclude that the right of the joint and several obligors to obtain contributions from the patient would be tempered by the admonition of section 6655 that the patient must not be stripped of all his assets so as to leave him a burden upon society. The contributing relatives would have no greater right to impoverish the patient than would the Department of Mental Hygiene."

But no relief is provided for B and C

Finally, what would be the result in a case where the mother had an estate of her own, and the Department

[fol. 176] decided to charge it and not charge either A, B, or C. Would the mother have a cause of action against A, B, and C upon her release for their proportionate share of the joint and several obligation created by Welf.C. 6650? Apparently so.

#### IV. Payments Made Under a Constitutional Statute Cannot Be Recovered.

At 38 Cal.Jur.2d 305 it is stated:

"Money paid under a statute that is subsequently declared to be unconstitutional cannot be recovered back as a payment made under a mistake of law, since such a payment is made according to the understanding of the parties as to the law prevailing at the time it was made."

This rule applies to the payment of a tax under an unconstitutional law (*Wingerter v. San Francisco* [1901] 134 Cal. 547) and to the payment of an assessment between private parties imposed by the State Superintendent of banks as well. (*Campbell v. Rainey* [1932] 127 C.A. 747.)

#### V. C.C. 206 Does Not Support the Classification in Question.

Spencer M. Williams, County Counsel, County of Santa Clara, argues in his brief at page 8 that C.C. 206 imposes a reciprocal obligation of support between parent and child, but he fails to note that the Legislature has terminated this obligation in several areas of support in the Welfare and Institutions Code.

[fol. 177] Under the section to Aid To The Needy Blind, it is provided at Welf.C. 4011 in part as follows:

" \* \* \* Notwithstanding the provisions of Section 206 of the Civil Code, or Section 270e of the Penal Code, or any other provision of this code no demand shall be made upon any relative to support or contribute toward the support of any applicant for or recipient of aid under this chapter. No county or officer or employee thereof shall threaten any such relative with

any legal action against him, by or in behalf of the county or with any penalty whatsoever."

Under the section on the Mentally Deficient it is provided at Welf.C. 7011.5, as amended in 1963, in part as follows:

" \* \* \* This section shall not be construed to impose any liability on the parents of mentally deficient persons."

A similar provision under the section covering Aid To Needy Children is found at Welf.C. 3011, as amended in 1963.

So it is submitted that C.C. 206 can no longer serve as a classification standard as claimed by counsel.

#### VI. The Only Facts Before the Court Are These Facts Set Forth in the Pleadings.

Respondent took its judgment in this case on its Motion for Judgment on the Pleadings, and for the purposes of this appeal we are limited to the facts as therein set forth. Respondent and Amici Curiae have apparently [fol. 178] joined in a concerted effort to flood the Court with many additional facts and several statements that do not appear to be factual. If respondent were serious in supplying the Court with the factual information included in the affidavits appended to its petition, respondent could have built a proper record in the trial Court below.

#### Conclusion

Most of the arguments raised by petitioner herein and in the briefs of Amici Curiae are directed to the propositions resolved in the case of *Hawley* and not in the case now before this Court. Their anxieties would be laid to rest would they allow themselves to understand that the decision herein and in *Hawley* has no effect on any of the assistance programs under the Federal government or of this State; that it only applies to people such as the son of *Hawley* and the incompetent in this case who are pre-

sumably detained against their will and the will of their relatives.

It is respectfully submitted that the petition for rehearing be denied.

Dated, Redwood City, California, February 21, 1964.

Respectfully submitted,

Dinkelspiel & Dinkelspiel, By Alan A. Dougherty,  
Attorneys for Appellant.

[fol. 179]

[File endorsement omitted]

Order Due  
February 28, 1964

S. F. No. 21349

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

DEPARTMENT OF MENTAL HYGIENE

v.

KIRCHNER

ORDER DENYING REHEARING—Filed February 26, 1964  
Respondent's petition for rehearing DENIED.

Gibson, Chief Justice.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 180] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 181]

## SUPREME COURT OF THE UNITED STATES

No. 111—October Term, 1964

DEPARTMENT OF MENTAL HYGIENE OF CALIFORNIA,  
Petitioner,

vs.

EVELYN KIRCHNER, Administratrix of the  
Estate of Ellinor Green Vance.

---

ORDER ALLOWING CERTIORARI—October 12, 1964

The petition herein for a writ of certiorari to the Supreme Court of the State of California is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

MAY 21 1964

In the Supreme Court of the  
United States

OCTOBER TERM, 1963

No. ~~11111~~ 111

DEPARTMENT OF MENTAL HYGIENE OF THE  
STATE OF CALIFORNIA,

*Petitioner,*

vs.

EVELYN KIRCHNER, Administratrix of the  
Estate of ELLINOR GREEN VANCE,  
*Respondent.*

Petition for Writ of Certiorari to the Supreme Court  
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# In the Supreme Court of the United States

OCTOBER TERM, 1963

No. ....

DEPARTMENT OF MENTAL HYGIENE OF THE  
STATE OF CALIFORNIA,

*Petitioner,*

vs.

EVELYN KIRCHNER, Administratrix of the  
Estate of ELLINOR GREEN VANCE,

*Respondent.*

## Petition for Writ of Certiorari to the Supreme Court of the State of California

The State of California, Department of Mental Hygiene, prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of California entered in the above case on January 30, 1964, rehearing denied February 26, 1964.

### OPINIONS BELOW

The opinion of the Supreme Court of the State of California is reported in 60 A.C. 704, 388 P.2d 720, 36 Cal. Rptr.

488 (1964), and is appended to this petition as Appendix A. The previous decision of the District Court of Appeal is reported in 29 Cal. Rptr. 312 (1963) and is appended to this petition as Appendix B.

### **JURISDICTION**

The Supreme Court of the State of California entered its judgment in this case on January 30, 1964. A timely Petition for Rehearing, filed on February 14, 1964, was denied on February 26, 1964 without opinion.

Petitioner invokes the jurisdiction of this Court under 28 U.S.C. section 1257(3) since the validity of a state statute has been drawn into question on grounds of repugnance to the Equal Protection Clause of the United States Constitution.

### **QUESTIONS PRESENTED**

1. Is a statute requiring the husband, wife, father, mother or children of a patient in a state mental hospital to pay for the cost of treating said patient, within reasonable standards of financial ability, so purely arbitrary and devoid of rational basis as to violate the Equal Protection Clause of the United States Constitution?

2. When a state supreme court decides a case on an important constitutional ground, neither raised at trial, or on appeal, nor briefed or argued by either party, and directs the trial court to enter judgment, thereby foreclosing an opportunity to present evidence not previously material, has the losing party been denied due process of law within the meaning of *Saunders v. Shaw*, 244 U.S. 317 (1917)?

1. Citations to this opinion will be cited as "Op-1" etc., in the Appendix.



### STATUTES INVOLVED

The primary statute concerned in this case is California Welfare and Institutions Code section 6650, which provides, in part,<sup>2</sup>

"The husband, wife, father, mother or children of a mentally ill person or inebriate, and the administrators of their estates, and the estate of such mentally ill person or inebriate, shall be liable for his care, support and maintenance in a state institution of which he is an inmate."

### STATEMENT OF THE CASE

The Department of Mental Hygiene brought an action against the estate of Ellinor Green Vance, a deceased adult daughter of Auguste Schaeche who has been a patient at Napa State Hospital since 1953 (CT 3:7-17).<sup>3</sup> The purpose of the suit was to obtain reimbursement for the care provided to Mrs. Schaeche for the four years preceding her daughter's death (CT 4:4-8).

Evelyn Kirchner is the duly appointed administratrix of the Estate of Ellinor Vance (CT 4:12-19), its principal beneficiary (CT 24:20-22), and also the guardian of the estate of Mrs. Schaeche, the incompetent (CT 16:2). Acting as administratrix of the decedent's estate, Evelyn Kirchner rejected the creditor's claim filed by the Department of Mental Hygiene (CT 5:5), but, as Mrs. Schaeche's guardian, offered to pay the claim out of the assets of the incompetent (CT 16:9-15). The Department of Mental Hygiene

2. The full text of § 6650, § 6651 (qualifying § 6650 liability by ability to pay), § 6653 (requiring investigation of financial condition of patient and relatives), § 6655, and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, all of which are here involved, are printed in full in Appendix D.

3. Designation to the transcript will be cited "CT."

refused to accept payment from the guardian and filed its action against the administratrix.<sup>4</sup>

By demurrer and then answer the defendant asserted that the defendant had *no* liability until the patient's assets were totally exhausted (CT 7:8-11). Nevertheless, no attempt was made to bring in the incompetent's estate as a party defendant. With the dispute limited to the single issue of priority, both parties moved for judgment on the pleadings. The Department's motion was granted and defendant's was denied. On appeal the District Court of Appeal affirmed (Opinion, Appendix B), but the Supreme Court of California reversed (Opinion, Appendix A).

#### HOW THE FEDERAL QUESTION AROSE

The constitutionality of the basic obligation imposed by section 6650 was not questioned prior to the California Supreme Court's holding that

"the cost of maintaining the state [mental] institution, including provision for adequate care of its inmates, cannot be arbitrarily charged to one class [the immediate family of the patient] in the society; such assessment violates the equal protection clause." (Op-5)<sup>5</sup>

4. The court states the defendant's Answer "alleged" the patient had in her guardianship estate "some \$11,000 in cash." (Op-3) This is not correct. Defendant alleged that the patient's realty had been sold for approximately that sum which was held in escrow. (CT 16.) The same Answer shows a lien in excess of \$6,425 in favor of the Department for the patient's care relating, for the most part, to a period for which suit would be barred by the statute of limitations. (CT 15:14-21.) This sum must be paid out of escrow. (CT 15.) Other claims such as attorney's and guardian's fees and the usual costs incident to a sale of real property must be paid. The total amount due the Department was far in excess of the total assets of the guardianship estate. (CT 26:21-24.)

5. The Constitution of the State of California has no Equal Protection Clause; therefore, all references to "equal protection" in the California Supreme Court's opinion and in this petition are to the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Although this question was not raised, briefed or argued, the court undertook to condemn, *sua sponte*, the entire statutory scheme of liability. For this reason Petitioner's arguments on the constitutional question first appear in its Petition for Rehearing before the Supreme Court of California. The request therein for an opportunity fully to brief and argue such an unexpected but important federal constitutional question was denied.

No constitutional question was presented in the trial court.<sup>6</sup>

In the District Court of Appeal, the defendant's sole contention was that, as a matter of statutory construction, priority in the order of liabilities had to be imposed. She argued, "[I]f any liability is to be imposed on the daughter or on her estate, it must be shown that . . . the mother [the patient] had *no funds*. . . ." (Emphasis added.) (App. Op. Br., p. 6) The assertion that due process and equal protection required a priority (App. Op. Br., p. 6) was "made without analysis or citation of authority." (Opinion, District Court of Appeal, Appendix B, p. 18)

Both before the District Court of Appeal and before the Supreme Court of California, the constitutionality of the basic obligation of close family members to extend support to one another in state hospitals was expressly conceded.<sup>7</sup>

6. See Points and Authorities of both parties in Clerk's Transcript, enclosed as part of the record.

7. "It is clearly established under the case law of this state that one who has a primary obligation to support the incompetent is liable for support [in a state mental hospital] under W.&I.C. § 6650. . . ." (App. Op. Br., p. 4.)

"[I]f the daughter were a person primarily liable for the support of the incompetent . . . the question of improper classification would not arise." (Pet. for Hear., p. 7-8.)

A case where the patient was an *adult* child was distinguished. "The obligation of a parent to support an afflicted child is an absolute one and has existed from time immemorial." (Pet. for Hear., p. 8.)

Defendant's use of *Department of Mental Hygiene v. McGilvray*, 50 Cal. 2d 742, 329 P.2d 689 (1958) [upholding the constitutionality

No constitutional argument was made other than for a priority in the order of liabilities.

The Department's position was that Section 6655 of the Welfare and Institutions Code stated that payment from the patient could *not* be exacted if, as a result, she would be a burden on society on release from the hospital. Conceding it would be arbitrary to preserve more than a modest<sup>8</sup> estate for the patient, petitioner urged that equal protection did not demand that it "impoverish each patient without regard to his or her age, dependents or financial circumstances" (Resp. Br., p. 18; Resp. Ans. to Pet. Hear., p. 13) before family members could be required to share the medical cost in accordance with their ability to pay.<sup>9</sup>

### **REASONS WHY A WRIT OF CERTIORARI SHOULD BE GRANTED**

#### **1. The Issue Here Presents an Important Federal Constitutional Question Not Previously Considered by This Court.**

The California Supreme Court has decided a federal constitutional question not previously considered by this Court; whether requiring close family members of a patient in a state mental hospital to contribute, within reasonable standards of ability to pay, toward the expense of treating and maintaining said patient violates the Equal Protection

---

of this liability against equal protection and due process attacks] (App. Op. Br., p. 6, and Pet. for Hear., pp. 7, 9) makes clear the basic obligation was not in question.

8. See also footnote 4, *supra*.

9. Contrary to the court's assertion that the Department claimed the power to "denude [the relatives] of *their* assets" (OP-8). (Emphasis by court.) Welfare and Institutions Code § 6651 (ability to pay provision) denies the Department the power to create economic hardships for any relative. *Department of Mental Hygiene v. McGilvery*, 50 Cal.2d at 760-761, 329 P.2d at 698-9 (1958), affirms a right to judicial review of that determination.

Clause of the Fourteenth Amendment to the United States Constitution.

The determination that the Constitution *requires* the taxpayers to bear the full burden of such expense, regardless of the affluence of the patient's family,<sup>10</sup> cannot be reconciled with decisions of this Court which give wide discretion to state legislatures to determine such policy questions<sup>11</sup> and which declare that only *invidious* discriminations<sup>12</sup> are invalidated by the Equal Protection Clause.

## 2. Similar Laws in Forty-four Jurisdictions Are Placed in Jeopardy.

The writ of certiorari also should be granted because of the importance of the instant question to the forty-two states, the District of Columbia and the Commonwealth of Puerto Rico, which have laws similar in language but *identical* in principle to the statute here involved. The

10. Apparently the California Supreme Court found an additional denial of equal protection in the fact that collection of medical costs is contingent upon meeting standards of the ability to pay. The court stated, "It is established in this state that the mere presence of wealth or lack thereof in an individual citizen cannot be the basis for valid class discrimination." (Op-8). In the case cited for that proposition, *Dribin v. Superior Court*, 37 Cal.2d 345, 348-350, 231 P.2d 809, 811-812 (1951), the poor were denied a type of divorce available to the rich. The above principle seems quite proper in such a case. But in the present context, rich and poor both receive medical care, and ability to pay results in liability for some but not for others. This approach is a familiar one. (Cf. Internal Revenue Code. Hence the California Supreme Court's analogy seems extremely inappropriate.

11. *Ferguson v. Skrupa*, 372 U.S. 726, 729-730 (1963); *Williamson v. Lee Optical*, 348 U.S. 483, 488-89 (1955); *Lincoln Federal Labor Union v. Northwestern Iron*, 335 U.S. 525, 536 (1949); *Daj-Brite, Inc. v. Missouri*, 342 U.S. 421, 423 (1952); *Daniel v. Family Security Life Ins.*, 336 U.S. 220, 224 (1949).

12. *Williamson v. Lee Optical*, *supra*, at 489; *Ferguson v. Skrupa*, *supra*, at 732.

validity of all of these laws<sup>13</sup> is jeopardized until this Court resolves whether the Equal Protection Clause denies state legislatures the power to define family responsibilities. Even statutes limited to requiring affluent or insured husbands to pay for the care provided to a wife in a state mental institution are challenged by this decision.<sup>14</sup>

Although the holding strikes down only the statute dealing with support of the insane, its ramifications are much greater because in a dictum the court suggests all other welfare reimbursement statutes "may well be re-examined." (Op-8)<sup>15</sup>

Because of the wide publicity given this decision,<sup>16</sup> lawyers across the country are now attacking laws of their own states, on federal constitutional grounds, citing the decision below as persuasive authority.<sup>17</sup>

13. See Appendix C for a compilation of such statutes. The fact that a state court has used the Equal Protection Clause to invalidate a law, similar to that in force in almost all of the other states, was a factor in the granting of certiorari in *N. Y. v. O'Neill*, 359 U.S. 1, 3 (1959) and *Unemployment Compensation Comm. of Alaska v. Aragon*, 329 U.S. 143, 145, n. 2 (1946). See also *McGee v. International Life Ins. Co.*, 355 U.S. 220, 221 (1957).

14. This proposition is demonstrated in footnote 27.

15. See footnote 30 for examples of such statutes.

16. See "Time," Feb. 14, 1964, p. 76; 32 U.S. Law Week, 2392.

17. The precise issues here involved are now pending before the New Jersey Supreme Court in *Department of Mental Hygiene v. Joseph L. Judd* (Docket No. A-686-62). *Kirchner* would be dispositive. The clerk of the court informs this office that no decision will be filed until the proceedings in *Kirchner* are final.

Also, on May 4, 1964 in *Pennhurst State School v. Estate of Samuel Goodhart*, the Supreme Court of New Jersey, in a suit for reimbursement by the Commonwealth of Pennsylvania against the estate of the deceased father of its patient, reversed a dismissal of the suit based on procedural grounds. In remanding the case for trial, the court said: "The parties may there raise any and all issues they determine appropriate. . . . Thus, they may seek determination, *inter alia*, of the important constitutional and jurisdictional questions dealt with in the *Department of Mental Hygiene v. Kirchner*,



### 3. The Fiscal Stability of Mental Hygiene Programs Nationwide Is Endangered.

The writ should be granted because of the importance of this question to the fiscal stability<sup>18</sup> of state programs for the care of the mentally ill. All of the states imposing liability upon the family of the patient depend in some part upon revenues from these sources for the building and staffing of hospitals. The State of California will lose about \$6,000,000<sup>19</sup> per year as a result of this decision. The potential financial impact nationwide cannot be documented upon this record. But it is clear that across the country, mental hygiene programs based on expected revenues of many millions of dollars are jeopardized by the continued citation of a decision which "directly challenges the right of a state to statutorily impose liability upon, and collect from, one adult for the cost of supporting [and treating] another adult" (Op-4) in a state mental hospital.

### 4. The Decision Below Is Erroneous.

The decision below is erroneous because (A) the classification herein is reasonable and (B) the cases cited below do not support the decision—on the contrary, they suggest most strongly that the court usurped the legislative function of deciding the wisdom of legislation.

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36 Cal. Rptr. 488, 388 P.2d 720 (1964) and *Calif. v. Copus*, 158 Texas 196, 309 SW 2d 277, cert. denied, 356 US 967.]

Although the court did not express an opinion about *Kirchner*, they did point out that the statutes of both Pennsylvania and New Jersey "evidence a common policy favoring the imposition of responsibility upon financially able parents for the maintenance of their indigent, incompetent children in state institutions." [Citations omitted, emphasis added.] A copy of this as yet unpublished opinion, and its proper citation when available, will be provided to opposing counsel. The pendency of these cases and others punctuates the urgency for guide lines from this Court.

18. Such a consideration moved this court to exercise its discretion in granting a petition for writ of certiorari in *Alaska v. Am. Can Co.*, 358 U.S. 224 at 225 (1958), and the amount of money potentially involved apparently was a factor in granting the writ in *U. S. v. Zazove*, 334 U.S. 602, n. 17 (1948).

19. See Appendix E, Petition for Rehearing before the Supreme Court of California. This includes payments from medical insurance of both patients and dependents.

# **A. THE CLASSIFICATION HEREIN IS REASONABLE.**

Manifestly not every classification denies equal protection of the law. Indeed, a classification is unconstitutional,

“1. . . . only when it is without *any* reasonable basis and therefore is purely arbitrary.

2. A classification having *some* reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality.

3. When the classification in such a law is called in question, if *any* state of facts reasonably can be conceived that would sustain it, the existence of that state of facts . . . must be assumed.

4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon *any* reasonable basis, but is essentially arbitrary.” *Lindsley v. Nat. Carbonic Gas Co.*, 220 U.S. 61, 78-79 (1911). (Emphasis added.)

More recent decisions, although quoting and citing the above statements in *Lindsley* with approval, also add that “the prohibition of the Equal Protection Clause goes no further than the invidious classification.”<sup>20</sup>

Until this decision, the California Supreme Court consistently followed the rule that to deny equal protection the classification must be “palpably arbitrary and beyond rational doubt erroneous.”<sup>21</sup>

20. *Williamson v. Lee Optical*, 348 U.S. 483, 489 (1955); and *Ferguson v. Skrupa*, 372 U.S. 726 at 732 (1963).

21. *Dribin v. Superior Court*, 37 Cal.2d 345, 351, 231 P.2d 809, 813 (1951). California has also consistently applied this principle and all of the same rules set forth in *Lindsley*, *supra*, in all equal protection cases previous to this one, for example, *Bilyeu v. State Emps. Ret. System*, 58 Cal.2d 618, 623, 24 Cal.Rptr. 562, 375 P.2d 442 (1963). No attempt, however, was made by the California Supreme Court in the instant decision to apply *any* of these principles to the case before it.

Here the critical question is whether requiring close family members of a patient to contribute within their means, towards the cost of treating said patient involves a classification that is "without *any* reasonable basis" or "is beyond rational doubt, erroneous."

This Court has never considered the precise question now at bench, but *every* state and federal court which has previously considered it has found the classification herein to be reasonable for civil commitments. The most recent decision is *Beach v. District of Columbia*, 320 F.2d 790 (1963), *certiorari denied*, 375 U.S. 943, 84 S.Ct. 351.

Section 21-318 of the District of Columbia Code is virtually identical to California's Welfare and Institutions Code section 6650. The District obtained a judgment against a father of an adult daughter for a portion of the cost of treating her in a District institution.

On appeal the judgment was affirmed by the Federal Court of Appeals which discussed the long history of this liability, noting that it was early recognized in England and had enjoyed complete acceptance in this country. The court then proceeded to enunciate the reasons why the imposition of such liability cannot be deemed arbitrary or unreasonable:

"[W]hen the law turns also to the father for help, if he is able to give it, when the estate of the incompetent is insufficient, it does so only to *supplement* the *public responsibility*. Placing a secondary obligation upon the father finds its validity in the reasonableness of attaching legal significance to the natural bonds of consanguinity. *It is not unreasonable, it is not a denial of due process, for the law to attach an enforceable obligation to the moral obligation* which exists in the usual family relationship of father and daughter." (Emphasis added.) 320 F.2d at 793.

The equal protection clause does not, by its terms, apply to the federal government; therefore the court was required to ground its holding on the due process clause although the rationale and language used were those of equal protection. The court's emphatic statement of the *reasonableness* of "attach[ing] an enforceable obligation to the moral obligation which exists in the usual family relationship" (ibid.) makes the court's reasoning directly applicable to equal protection cases<sup>22</sup> because it meets squarely and disposes of the contention that the classification is essentially arbitrary.

Hence it is appropriate to refer to both equal protection cases and to cases where "due process" objections were made and rejected. Without exception, support statutes involving classifications virtually identical to that here in issue were sustained as being neither arbitrary nor unreasonable. *People v. Hill*, 163 Ill. 186, 46 N.E. 796, 37 L.R.A. 634 (1896); *State v. Bateman*, 110 Kan. 546, 204 P. 682 (1922); *In re Idleman*, 146 Ore. 13, 27 P.2d 305 (1933); *Commonwealth v. Zommick*, 362 Pa. 299, 66 Atl.2d 237 (1949); *Kough v. Hoehler*, 413 Ill. 409, 109 N.E.2d 177 (1956); *State v. Webber*, 163 Ohio St. 598, 128 N.E.2d 3 (1955); *Dept. of Public Welfare v. Haas*, 15 Ill.2d 204, 154 N.E.2d 265, 271 (1958).

<sup>22</sup> *Bolling v. Sharpe*, 347 U.S. 497 (1954), also a case from the District of Columbia, demonstrates the reasoning in *Beach* does come to bear upon the instant question. There, this Court pointed out (p. 499) that while equal protection may be a more explicit safeguard than due process, and hence not always interchangeable with it, "the concepts of equal protection and due process, both stemming from our American ideal of fairness, are not mutually exclusive." (Emphasis added.) Cf. *Detroit Bank v. United States*, 317 U.S. 329, 337-338 (1943); *Currin v. Wallace*, 306 U.S. 1, 13-14 (1938). The court then proceeded to strike down racial discrimination in the District of Columbia under the same basic rationale it used the same day in *Brown v. Bd. of Education*, 347 U.S. 483 (1954) under the Equal Protection Clause.

The most succinct summary of the attitude of the courts of the several states on the constitutional question is found in a California case not mentioned in the instant decision, *State Commission in Lunacy v. Eldridge*, 7 Cal.App. 298, 304, 94 Pac. 597 (1908):

"And, as to the proposition of the alleged unequal burden imposed upon one class, thus, as contended, discriminating in favor of another upon whom the burden is not cast, the answer is, we think, that the so-called unequal burden is only one springing from a natural duty which, as to its performance, the legislature has recognized by positive enactment. (Civ. Code, §§ 38, 206.)"

Only five years ago the court below, in *Department of Mental Hygiene v. McGilvery*, 50 Cal.2d 742, 329 P.2d 689 (1958), upheld this same liability against charges of denial of equal protection. The reasonableness of the classification was then justified by pointing out that,

"From time immemorial it has been the natural primary obligation of the parent to bear the financial burden of caring for an afflicted child. [An adult in this case.] In this humanitarian age the state has assumed that obligation in the absence of the parent's ability to do so. This fact has not, however, entirely abolished the parental obligation. It has done so only to the extent provided by statute." 50 Cal.2d at 753, 329 P.2d at 694.

Reciprocal duties of support for the mentally ill between close family members pervade western civilization. They have been part of the common law since 43 *Elizabeth*, Chapter 2, Section 7 was enacted in 1601. *People v. Hill*, 163 Ill. 186, 46 N.E. 796, 797-8 (1896), observed the duty was a principle of natural law and one which was enforced by the

courts of the civil law countries.<sup>23</sup> The Statute of Elizabeth was said to be intended to correct this "defect" in the English law and to "transform[ ] the imperfect moral duty into a statutory and legal liability." 46 N.E. at 798. See also *Beuch v. Government of District of Columbia*, 320 F.2d 790, 792, n. 4 (1963).

The unanimity of the centuries-old acceptance of this liability throughout western civilization refutes the suggestion it is "purely arbitrary." "The Fourteenth Amendment did not tear history up by the roots. . . ." *Goesaert v. Cleary*, 335 U.S. 464, 465 (1948).

#### B. THE CASES CITED BELOW DO NOT SUPPORT THE DECISION.

The court below found "dispositive of the issue before us" (Op-6) its holding in *Department of Mental Hygiene v. Hawley*, 59 Cal.2d 247, 28 Cal.Rptr. 718, 379 P.2d 22 (1963), in which the court had invalidated relative responsibility for the support and treatment of the *criminally* insane. The holding of *Hawley* is:

"The Fourteenth Amendment, in declaring that a State shall not 'deprive any person of life, liberty or property without due process of law,' gives to each of these an equal sanction; it recognizes 'liberty' and 'property' as co-existent human rights, and debars the States from any unwarranted interference with either." (*Coppage v. Kansas* (1915) 236 U.S. 1, 17 \* \* \* It has further been declared that 'Life, liberty, property, and the equal protection of the law, grouped together in the Constitution, are so related that the deprivation of any one of those separate and independent rights may lessen or extinguish the value of the other three.'

23. See also 1 Blackstone, Commentaries 447-8 (Cooley's, 4th ed. 1899). Roman law unequivocally imposed a reciprocal duty of support between insane parents and adult children. See 12 The Civil Law (Trans. S. P. Scott) 62, quoting from the Code of Justinian, Book I, Extract of Novel 115, Chapter III.



(*Smith v. Texas* (1914) 233 U.S. 630 [34 S.Ct. 681, 682].)" 59 Cal.2d at 256.

A decision which finds "dispositive" a case whose sole constitutional authority is the repudiated doctrine of *Coppage v. Kansas*, 236 U.S. 1 (1915) [invalidating a statute outlawing "yellow dog" contracts] and *Smith v. Texas*,<sup>24</sup> is clearly infected with the infirmity of those cases. Any reliance today on *Coppage* is as misplaced as would be reliance upon *Lochner v. New York*, 198 U.S. 45 (1905), or *Adkins v. Childrens Hospital*, 261 U.S. 525 (1923). Over twenty years ago this Court refused to follow *Coppage*, stating:

"The course of decisions [since *Adair* and *Coppage*] have completely sapped those cases of their authority." *Phelps Dodge v. Labor Bd.*, 313 U.S. 177, at 187 (1941).

And only last term this Court said,

"The doctrine that prevailed in *Lochner*, *Coppage*, and *Burns* and like cases—that due process [or equal protection] authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded." *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963).<sup>25</sup>

<sup>24</sup> 233 U.S. 630 (1914) (Justice Holmes dissenting). Statutory qualifications for freight conductor were held to be unconstitutional, apparently because the court did not believe them necessary. This decision is severely undermined by recent decisions giving wide latitude to legislatures to regulate occupations, for example, *Ferguson v. Skrupa*, *supra*, 372 U.S. 726 (1963) [debt adjusting by non-lawyers forbidden], *Williamson v. Lee Optical*, *supra*, 348 U.S. 483 (1955) [forbidding opticians from duplicating lenses without a prescription].

<sup>25</sup> Equally positive condemnations of *Coppage* were made in *Day-Brite v. Missouri*, 342 U.S. 421, 423, 425 (1949) and *Lincoln Union v. Northwestern*, 335 U.S. 525, 535-536 (1949). See also *Williamson v. Lee Optical*, 348 U.S. 483, 488-489 (1955). *Daniel v. Family Ins. Co.*, 336 U.S. 220, 224 (1949).

Surely, drawing even indirect support from *Coppage* further enfeebles the decision below.

The court below also relied *directly* upon *Hoeper v. Tax Commission*, 284 U.S. 206 (1931), in which this court invalidated a statute under which a state assessed an income tax against the husband measured by the sum of the income of both husband and wife. The California Court referred to *Hoeper* as if controlling on the question of whether a family relationship<sup>26</sup> is a permissible basis for classification and then quoted from the case the truism that a state is forbidden to deny equal protection of the laws (Op-7). Justice Holmes' dissent<sup>27</sup> to *Hoeper* (Brandeis and Stone concur-

26. This court has always upheld, against charges of a denial of equal protection, *preferential* inheritance tax treatment for close family members as against strangers or collateral heirs. *Campbell v. Calif.*, 200 U.S. 87, 94 (1905).

27. "So far as the Constitution of the United States is concerned, the legislature has power to determine what the consequences of marriage shall be, and as it may provide that the husband shall or shall not have certain rights in his wife's property, and *shall or shall not be liable for his wife's debts*, it may enact that he shall be liable for taxes on an income that in every probability will make his life easier and help to pay his bills. . . . It is said that Wisconsin has taken away the former characteristics of the marriage state. But it has said in so many words that it keeps this one. And when the legislature clearly indicates that it means to accomplish a certain result within its power to accomplish, it is our business to supply any formula that the *eleganta juris* may seem to require." 284 U.S. at 220. (Emphasis added.)

The application of Justice Holmes' rationale to the case at bench would be that the decision as to the liability of family members for the support and treatment of each other is a *legislative*, rather than a judicial, determination.

That the decision herein seems to undermine liability even for one's spouse is clear from the following: The challenge to the statute goes to "the right of a state . . . to collect from one adult for the cost of supporting another adult [in a state mental institution]" (Op. - 3), the court's reliance upon *Hoeper* involving a husband and wi. relationship, and the fact that the court distinguished (but did not approve) cases based upon the marriage contract as not considering whether there was a denial of "equal protection of the law to the servient spouse." (Op-4).

ring) is more compatible with current authorities<sup>28</sup> which thoroughly devitalize it. Whatever that case means today, it certainly cannot justify striking down this classification merely because it is based upon a family relationship.

To recapitulate briefly, petitioner has demonstrated two facts: First, that a liability so familiar throughout western civilization, so frequently examined by state courts of last resort, so universally enacted by the legislatures of the several states, cannot be said to be "purely arbitrary"; nor can it be said to "infringe fundamental principles as they have been understood by the traditions of our people and our law."<sup>29</sup> Second, it is obvious neither *Hoeper*, *Coppage*, *Smith v. Texas* nor any other case cited by the court below supports the holding that *this* classification is "without any reasonable basis." Then how can the decision below be explained? By the inescapable conclusion that the court below has usurped the function of the legislature and has

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28. For example, see *Fernandez v. Wiener*, 326 U.S. 340 (1945) upholding a federal estate tax measured by the value of the entire community property at the time of the death of the husband. See especially Justice Douglas' concurring opinion (at 365) in which, after referring to *Hoeper*, he states:

"But I can see no reason why that which is in fact an economic unit may not be treated as one in law. For as Mr. Justice Holmes pointed out in his dissent, there is a community of interest when two spouses live together and when each usually would get the benefit of the income of each without inquiry into the source."

*Albanesi D'Imperio v. Secretary of Treasury*, 223 F.2d 413, 415 (1 Cir. 1955), questions whether, in the light of later cases, "that case still speaks with authority." In addition, see *Ballester v. Descartes*, 181 F.2d 823, 829, (1 Cir. 1950), questioning if "*Hoeper v. Tax Commission* would be followed today even on its particular facts" in view of *Fernandez*. Cf. *Ballester-Ripoll v. Court of Tax Appeals*, 142 F.2d 11, 17 (1 Cir. 1944) (cert. denied, 323 U.S. 723), for a similar implication.

29. *Lochner v. N. Y.*, 198 U.S. 45, 76 (dissent).

taken on itself the task of deciding the *wisdom* of the legislation. This is clear from statements in its opinion such as:

"we need not blind ourselves to the social evolution which has been developing during the past half century; it has brought expanded recognition of the *parens patriae* principle . . . and other social responsibilities. . . . From all of this it appears that former concepts which have been suggested to uphold the imposition of support liability upon a person selected by an administrative agent from classes of relatives designated by the Legislature may well be re-examined." (Op-7-8)<sup>30</sup>

Certainly the extent of development of the "social evolution," the scope of the "*parens patriae* principle" and "other social responsibilities" are matters not dictated by the Constitution but are properly left to legislative judgment.

"[A] constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the State or of *laissez faire*." Justice Holmes dissenting in *Lochner v. N.Y.*, 198 U.S. 45, 75 (1905).

Petitioner recognizes that an "expanded recognition of the *parens patriae* principle" (Op-8) may have convinced many forward-looking and intelligent people that the state should provide to all citizens medical treatment for both physical and mental ills. Equally intelligent people hold opposite opinions. But the Constitution does not *require* free hospitalization for mental illness any more than it "enact[s]"

30: Arguing from this dictum, and from the basic rationale of the court below, that where the legislature has defined any public responsibility, individual responsibility is constitutionally prohibited, attacks are being made on the validity of California Welfare and Institutions Code §§ 2181 (liability of adult child for aid to aged parent), 2576 (liability for general welfare assistance), 903 (support in county juvenile homes and camps), 914 (county hospitalization provided to ward of juvenile court), 5077 (support of mentally disordered, not in state hospital). - *Every* state and county has laws similar to these. All will be under attack until the principle of the decision below is examined by this court.

Herbert Spencer's Social Statics." The Constitution leaves enough room for this to be a debatable question. And,

"if our recent cases mean anything, they leave debatable issues as respects business, economic, and social affairs to legislative decision. We could strike down this law only if we returned to the philosophy of the *Lochner*, *Coppage* and *Adkins* cases." *Day-Brite Lighting, Inc. v. Missouri*, *supra*, 342 U.S. 421, 425 (1952).

Clearly the court below no longer believes this liability to be debatable. But from both its reasoning and its case authority, this decision is inescapably saddled with a discarded philosophy of constitutional law. It will be cited across the country in state courts and in petitions before this court as persuasive authority that the mental hygiene laws of forty-four states and all family support statutes of every kind are unconstitutional until this court grants review and provides definitive guidelines for all jurisdictions.<sup>31</sup>

##### **5. The Decision Below Denied Petitioner Procedural Due Process.**

Petitioner contends that the decision below denied it procedural due process in two particulars. First, it was not given an opportunity to be heard on the issue which was dispositive of the case. Second, no opportunity was given to present evidence, which would have been immaterial in the trial court under the then existing state of the law, but which bore directly on the question decided by the court.

The Statement of the Case and the Record filed herein make clear that the question of law on which the holding was based was not raised by the defendant. An examination of the briefs also shows it was never presented to or properly before any court below. In addition, the transcript of oral

31. For cases now before the New Jersey Supreme Court see footnote 17, *supra*.

argument before the Supreme Court of California<sup>32</sup> demonstrates that nothing said by defendant's counsel or raised by questions from the bench apprised either counsel of that which has become the holding of the case.

The decision was especially unexpected because the same question was examined only five years before in *Department of Mental Hygiene v. McGilvery*, 50 Cal.2d 742 (1958) where the constitutionality of this liability was upheld. No attack was made on *McGilvery* by defendant, and he implicitly conceded its correctness at several points in his briefs. (See, *supra*, footnote 7.)

Petitioner specifically requested an opportunity to brief completely and argue such an important question (Pet. for Rehear., p. 3-5) but it was denied without opinion. Moreover, in reversing, the trial court was instructed to enter judgment for defendant, thus preventing the Department from submitting any further evidence.

The court emphasizes that the incarceration of patients is for the protection of society and that therefore the cost is solely society's obligation<sup>33</sup> (Op-5, 7). The unstated premise that mental illness is equatable with dangerous tendencies can be shown to be false,<sup>34</sup> and that the modern use

32. Filed as part of the record before this court.

33. Conceding, *arguendo*, that there is a public benefit here, this is not incompatible with individual liability. The law is full of such cases. For example, streets are paved for the public good, yet benefited abutting property owners can be required to pay. In all welfare legislation the legislature has recognized a public responsibility; yet, in most, close relatives are required to assist to the extent of their ability.

34. See Report of Dr. Walter Rapaport, Pet. for Rehear., Appendix B, p. 2, stating in part, "... by and large the mentally ill cannot be considered as dangerous to society. It has been established by scientific studies that people who have been in our hospitals, or who are in our hospitals, commit less crimes of violence when com-



of public hospitals is *not* for incarceration;<sup>35</sup> but for medical treatment<sup>36</sup> which benefits inure primarily to the family. Restraints of every kind on the patient are being abandoned<sup>37</sup> and the custodial aspects of such hospitals are being discarded as a product of a "less enlightened era."<sup>38</sup>

The Department should have an opportunity to demonstrate by the presentation of evidence that the court's factual premises are false. Thus far, it has been denied that right.

Petitioner does *not* contend courts are bound in deciding cases by the issues presented by counsel to the court or are required to give notice before overruling a case.<sup>39</sup> However

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pared to the general population than those who have not been in our hospitals. . . ."

See also comments of Lloyd S. Nix, Judge of Superior Court, Psychiatric Department, Los Angeles, 34 L.A. Bar Bull. 291 (1959), quoted Pet. for Rehear., pp. 24-25.

35. Nothing could be more illustrative of this point than the history provided in the preface to New York Mental Hygiene Law. In McKinney's Consolidated Laws of New York, Annotated, Book 34-A, page XIII, it is stated,

"With the advent of the term 'insane', which in itself connotes illness, the advance of the theory of cure rather than mere custody became more rapid. The authorities were recognizing that insanity as such was a condition akin to a physical ailment and one in which care and cure were becoming the fundamental objects, with custody a necessity in order to permit proper care and treatment and possible cure. The provisions of the Insanity Law were more humane and more carefully worded, giving further impetus to the impression that the subject to be controlled is one primarily of illness and not detention alone."

36. Ibid., Appendix B, p. 3.

37. Ibid.

38. See Appendix D, Pet. for Rehear.

39. Cases such as *Mapp v. Ohio*, 367 U.S. 643 (1961) are inapposite. The admissibility questions were argued below (367 U.S. at 671), and questions from the bench about overruling *Wolf v. Colo.* gave opposing counsel a chance to defend it. In addition, conviction on other evidence was possible on remand, whereas here judgment was entered for the defendant.

Petitioner does contend that when a radical change in the law is contemplated, which treats as dispositive an issue and question of law not raised, briefed or argued, procedural due process requires that the parties have an opportunity to brief and argue the point of law prior to the court's decision; and, if the unexpected point of law would make evidence not previously material become relevant, due process requires that the parties be given an opportunity to introduce it to a trial court.

This case is squarely within the rule of *Saunders v. Shaw*, 244 U.S. 317 (1917). There Justice Holmes noted:

"But when the act complained of is the act of the Supreme Court, done unexpectedly at the end of the proceeding, when the plaintiff in error no longer had any right to add to the record, it would leave a serious gap in the remedy for infraction of constitutional rights if the party aggrieved in such a way could not come here: The defendant was not bound to contemplate a decision of the case before his evidence was heard and therefore was not bound to ask a ruling or to take other precautions in advance." *Id.*, at 320.

Equally in point is *Brinkerhoff-Faris v. Hill*, 281 U.S. 673 (1930) in which the Missouri Supreme Court had approved a dismissal of a complaint for failure to exhaust a previously non-existent administrative remedy.

There, as here, the dispositive issue "was not suggested by anyone in the entire litigation until the Supreme Court filed its opinion. . . ." (p. 677)

There, as here, "[N]o one doubted the authority of the [previously controlling] case until it was expressly overruled in the case at bar." (p. 677)

There, as here, a timely petition for rehearing filed and

asking for an opportunity to be heard was summarily denied without opinion<sup>40</sup> and plaintiff's complaint dismissed.

Justice Brandeis pronounced this court's holding that the state supreme court had "denied to the plaintiff due process of law—using that term in its primary sense of an opportunity to be heard and to defend its substantive right." (p. 678)

Petitioner here has been denied those rights. A writ of certiorari should be granted to review this important federal question.

### CONCLUSION

For the reasons discussed above, we respectfully submit that certiorari should issue to review the decision of the court below.

Dated, San Francisco, California,

May 20, 1964.

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40. "The additional federal claim thus made was timely, since it was raised at the first opportunity [in the petition for rehearing]." (p. 678) *Brinkerhoff* necessarily holds that a petition for rehearing is not an opportunity to be heard. The California Judicial Council's Nineteenth Biennial Report (1963) indicates 98% of the petitions are denied.

## ***Appendix A***

*In the Supreme Court of the State of California*

*-In Bank*

S. F. 21349

Department of Mental Hygiene,  
Plaintiff and Respondent,

v.

Evelyn Kirchner, as Administratrix of  
the Estate of Ellinor Green Vance,  
Defendant and Appellant.

### **OPINION**

Defendant administratrix appeals from a judgment on the pleadings, in the sum of \$7,554.22, entered against her in an action by the Department of Mental Hygiene of the State of California to recover the alleged cost of care, support, maintenance and medical attention supplied to Auguste Schaeche, mother of defendant's intestate, as a committed inmate of a state institution for the mentally ill. As will appear, we have concluded that the statute upon which the judgment is based violates the basic constitutional guaranty of equal protection of the law, and that the judgment should be reversed.

Plaintiff in its complaint alleges in substance that in January 1953 the mother, Mrs. Schaeche, was adjudged men-

tally ill<sup>1</sup> and by the court committed to Agnews<sup>2</sup> State Hospital where she had remained under confinement to the date the complaint was filed in April 1961; that the decedent, Ellinor Vance, was Mrs. Schaeche's daughter "and as such was legally responsible" for her committed mother's care and maintenance at Agnews; that pursuant to section 6651<sup>3</sup> of the Welfare and Institutions Code the Director of Mental Hygiene determined the rate for such care and maintenance, and "said charges were made continuously for every month" Mrs. Schaeche was a "patient" at Agnews; that for the period of August 25, 1956, through August 24, 1960, such charges totaled \$7,554.22, none of which had been paid; that the daughter died on August 25, 1960, and in November 1960 plaintiff filed against the daughter's estate its creditor's claim for \$7,554.22, which was rejected, and which sum plaintiff now seeks to recover.

Defendant in her answer denies that her intestate, the daughter, "was legally responsible" for the mother's care and maintenance furnished by the state at Agnews "or any

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1. Welfare and Institutions Code section 5040: "'Mentally ill persons' means persons who come within either or both of the following descriptions:

"(a) Who are of such mental condition that they are in need of supervision, treatment, care, or restraint.

"(b) Who are of such mental condition that they are dangerous to themselves or to the person or property of others, and are in need of supervision, treatment, care, or restraint."

2. Welfare and Institutions Code section 6500: "There are in the State the following state hospitals for the care and treatment of the insane, the mentally ill, and the mentally disordered: . . .

3. Agnews State Hospital near the City of San Jose. . . ."

3. Welfare and Institutions Code section 6651: "The rate for the care, support, and maintenance of all mentally ill persons and inebriates at the state hospitals . . . where there is liability to pay . . . shall be reviewed each fiscal year and fixed at the statewide average per capita . . . as determined by the Director of Mental Hygiene. . . ."

other place whatsoever"; denies any indebtedness to plaintiff; and furthermore alleges that the incompetent mother herself owns (in her guardianship estate) some \$11,000 in cash, to which resort should first be had before attempt is made by the state to charge her children with the costs of her care. More specifically, defendant directly challenges the right of a state to statutorily impose liability upon, and collect from, one adult for the cost of supporting another adult whom the state has committed to one of its hospitals for the mentally ill or insane. Both parties moved for judgment on the pleadings, the court granted plaintiff's motion and denied that of defendant, and from the ensuing judgment defendant appeals.

In support of the judgment plaintiff department relies upon the declaration in section 6650 of the Welfare and Institutions Code that "The husband, wife, father, mother, or *children* of a mentally ill person or inebriate . . . shall be liable for his care, support, and maintenance in a state institution of which he is an inmate. . . ." (Italics added.)

#### 4. *Historical Background:*

At common law there was no liability on a child to support parents, or on parents to support an adult child. (See, e.g., *County of Los Angeles v. Frisbie* (1942) 19 Cal. 2d 634, 645-646 [11]; *Duffy v. Yordi* (1906) 149 Cal. 140, 141-142 ("at common law there was no legal obligation on the part of the child to [support a parent] . . . such obligation depends entirely upon statutory provisions"); *Napa State Hospital v. Flaherty* (1901) 134 Cal. 315, 316-317 ("The right to maintain any action against the father for the support of an adult child, if any such right exists, is purely a creation of the statute. No such right existed at common law"); 44 C.J.S., p. 175, fn. 79; p. 176, fn. 81; p. 183, fn. 79; 67 C.J.S., pp. 704-705; pp. 727-728, § 24; 39 Am. Jur., pp. 710-712; 41 Am. Jur. pp. 684-687.) We recognize that various states have undertaken from time to time to create an obligation upon children to support indigent parents and upon parents to support indigent adult children; some states have even purported to create and impose a support obligation on brothers and sisters and on grandparents and grandchildren. (See 41 Am. Jur., pp. 684-686, §§ 6-7; 67 C.J.S., p. 705, § 17; id., p. 728, § 24.)



The department, citing *Guardianship of Thrasher* (1951) 105 Cal. App. 2d 768, and *Dept. of Mental Hygiene v. Black* (1961) 198 Cal. App. 2d 627, asserts flatly that the liability purportedly imposed by section 6650 upon the persons therein designated is not only, in the language of the section, "a joint and several liability," but is absolute and unconditional, and that "the fact that the patient has assets of her own becomes completely immaterial." In *Thrasher* it was held (pp. 776-778 [3-8] of 105 Cal. App. 2d) that the husband of an incompetent committed to a state mental hospital was under the duty to support her therein even though she had estate of her own. That case is of small help to plaintiff here; manifestly, the basic obligation and relevant status of the husband arose from the marriage contract to which he was a consenting party and no consideration was given to the question as to whether imposing liability upon one spouse for support of the other in a state institution denies equal protection of the law to the servient spouse. (See also *Estate of Risse* (1957) 156 Cal. App. 2d 412, 421 [7].) However, in *Black* the court held the mother of a mentally ill person to be liable for the cost of the latter's support in a state hospital, with the declaration (p. 632 [2] of 198 Cal. App. 2d) that by reason of the provisions of section 6650 there was no merit to the contention "that the personal assets of the incompetent patient must first be exhausted before liability is imposed on responsible relatives." (See also *County of Lake v. Forbes* (1941) 42 Cal. App. 2d 744, 747 [3, 5], and *Janes v. Edwards* (1935) 4 Cal. App. 2d 611, 612, involving other and different statutes.) We proceed to the fundamental issue tendered by the case before us.

Recently in *Department of Mental Hygiene v. Hawley* (1963) 59 Cal. 2d 247, the department, relying upon this same section 6650, attempted to collect from a father for the

cost of care, support and maintenance in a state hospital for the mentally ill or insane of his son who had been charged with crime, but before trial of the criminal issue (and obviously without adjudication of that issue) had been found by the court to be insane and committed to such state hospital. We there held (pp. 255-256 [6]) that "The enactment and administration of laws providing for sequestration and treatment of persons in appropriate state institutions—subject of course, to the constitutional guaranties—who would endanger themselves or others if at large is a proper state function; being so, it follows that the expense of providing, operating and maintaining such institutions should (subject to reasonable exceptions *against the inmate or his estate*) be borne by the state." (Italics added.) We further held that recovery could not constitutionally be had against the father of the committed patient. This holding is dispositive of the issue before us. Whether the commitment is incidental to an alleged violation of a penal statute, as in *Hawley*, or is essentially a civil commitment as in the instant case, the purposes of confinement and treatment or care in either case encompass the protection of society from the confined person, and his own protection and possible reclamation as a productive member of the body politic. Hence the cost of maintaining the state institution, including provision of adequate care for its inmates, cannot be arbitrarily charged to one class in the society; such assessment violates the equal protection clause.

Although numerous cases can be cited wherein so-called support statutes have been sustained against various attacks,<sup>5</sup> research has disclosed no case which squarely faced,

5. See, e.g., *State v. Bateman* (1922, Kan.) 204 P. 682, 683 [2]; *County of Los Angeles v. Frisbie* (1942) *supra*; 19 Cal. 2d 634, 645-646 [11]; *Mallatt v. Luihn* (1956, Ore.) 294 P.2d 871, 878.

considered, discussed and sustained<sup>6</sup> such statutes in the light of the basic question as to equal protection of the law in a case wherein it was sought to impose liability upon one person for the support of another in a state institution. No such constitutional issue appears to have received either consideration or documented resolution in *Dept. of Mental Hygiene v. McGilvery* (1958) *supra*, 50 Cal. 2d 742 (see pp. 754-761, esp. p. 760 [22] wherein in this respect it is commented merely that "the present claim of unlawful classification may not properly be sustained"); neither is there any mention of either the United States or the California Constitutions in *Department of Mental Hygiene v. Shane* (1956) 142 Cal. App. 2d Supp. 881, relied on in *McGilvery* with the statement (p. 752 [6] of 50 Cal. 2d), "The present case cannot be distinguished from that case." It is axiomatic that cases are not authority for propositions not considered (*McDowell & Craig v. City of Santa Fe Springs* (1960) 54 Cal. 2d 33, 38 [5]; *Maguire v. Hibernia S. & L. Soc.* (1944) 23 Cal. 2d 719, 730 [4]), and the *Shane* case obviously does

880 [3-13]; *Dept. of Mental Hygiene v. McGilvery* (1958) 50 Cal. 2d 742, 760-761 [23] [24]; (attacks based on asserted lack of procedural due process).

*County of Los Angeles v. Hurlbut* (1941) 44 Cal. App. 2d 88, 92-94 [1-5]; *Dept. of Mental Hygiene v. McGilvery* (1958) *supra*, 50 Cal. 2d 742, 754-760 [11-22]; *Mallatt v. Luihn* (1956, Ore.) *supra*, 294 P.2d 871, 882 [19-25]; *Kelley v. State Board of Social Welfare* (1947) 82 Cal. App. 2d 627, 631-632 [2]; (attacks based on certain limited claims of discriminatory classification).

*Maricopa County v. Douglas* (1949, Ariz.) 208 P.2d 646, 649 [8-9] (attack based on claim of double taxation); *Dept. of Mental Hygiene v. McGilvery* (1958) *supra*, 50 Cal. 2d 742, 761 [25], and *Mallatt v. Luihn* (1956, Ore.) *supra*, 294 P.2d 871, 883-884 [28]; (attacks on ground of taking private property for public use without just compensation).

*State v. Webber* (1955, Ohio) 128 N.E. 2d 3, 7 [3], and *State v. Trozler* (1930, Ind.) 173 N.E. 321, 323 [4] (constitutional question avoided or not discussed).

6. Contra, see *Department of Mental Hygiene v. Hawley* (1963) *supra*, 59 Cal. 2d 247.

not give substance to *McGilvery* on the subject constitutional issue.

We note that in *Hoeper v. Tax Commission* (1931) 284 U.S. 206, family relationship was not found an adequate basis for sustaining a statute under which the state attempted to assess an income tax against the husband measured in part by his wife's separate property income; the court there observed (p. 217), "The State is forbidden to deny due process of law or the equal protection of the laws for any purpose whatsoever." (Italics added.) Further, in *Estate of Tetsubumi Yano* (1922) 188 Cal. 645, 656-657 [14], blood relationship was found insufficient to constitute a basis for discrimination against a citizen minor whose father because of his race was (under a then held valid statute) ineligible for citizenship. (See also *Oyama v. California* (1948) 332 U.S. 633.) It is established in this state that the mere presence of wealth or lack thereof in an individual citizen cannot be the basis for valid class discrimination (*Dribin v. Superior Court* (1951) 37 Cal. 2d 345, 348-350 [1] [holding that a statute purporting to authorize a divorce from an insane spouse but limiting it to only those who could prove financial responsibility, constituted "arbitrary and unreasonable class discrimination"] and in the same case (at p. 352 [11]) we declared "It is elementary that The insane have always been regarded as subject to control on the part of the state, both for their protection and for the protection of others." (Italics added.)

Lastly, in resolving the issue now before us, we need not blind ourselves to the social evolution which has been developing during the past half century; it has brought expanded recognition of the *parens patriae* principle (see 44 C.J.S. 48, § 3; 67 C.J.S. 624; 31 Words & Phrases 99-101) and other social responsibilities, including The California Re-

habilitation Center Act (added Stats. 1961, ch. 850, p. 2228) and divers other public welfare programs to which all citizens are contributing through presumptively duly apportioned taxes. From all of this it appears that former concepts which have been suggested to uphold the imposition of support liability upon a person selected by an administrative agent from classes of relatives designated by the Legislature may well be re-examined. Illustrative of California's acceptance of this principle is the provision of section 6655 of the Welfare and Institutions Code that payment for the care and support of a patient at a state hospital "shall not be exacted . . . if there is likelihood of the patient's recovery or release from the hospital and payment will reduce his estate to such an extent that he is likely to become a burden on the community in the event of his discharge from the hospital." Thus, the state evidences concern that its committed patient shall not "become a burden on the community in the event of his discharge from the hospital," but at the same time its advocacy of the case at bench would seem to indicate that it cares not at all that relatives of the patient, selected by a department head, be denuded of their assets in order to reimburse the state for its maintenance of the patient in a tax supported institution. Section 6650 by its terms imposes absolute liability upon, and does not even purport to vest in, the servient relatives any right of control over, or to recoup from, the assets of the patient. A statute obviously violates the equal protection clause if it selects one particular class of persons for a species of taxation and no rational basis supports such classification. (See *Blumenthal v. Board of Medical Examiners* (1962) 57 Cal. 2d 228, 237, [13]; *Bilyeu v. State Em-*

7. This is not a criticism of the department or its counsel; they are merely performing to the best of their ability the duty purportedly imposed by the statute.

*ployees' Retirement System* (1962) 58 Cal. 2d 618, 623 [2].) Such a concept for the state's taking of a free man's property manifestly denies him equal protection of the law:

Anything found in *Dept. of Mental Hygiene v. McGilvery* (1958) *supra*, 50 Cal. 2d 742, 754-761 [11-25] or in cases relying thereon (see e.g., *Dept. of Mental Hygiene v. Black* (1961) *supra*, 198 Cal. App. 2d 627, 632 [2]; *Estate of Setzer* (1961) 192 Cal. App. 2d 634, 637-638 [1]) contrary to the views herein expressed must be deemed disapproved.

The judgment is reversed and the cause is remanded with directions to enter judgment for defendant.

SCHAUER, J.

WE CONCUR:

GIBSON, C. J.

TRAYNOR, J.

MCCOMB, J.

PETERS, J.

TOBRINER, J.

PEEK, J.

Filed—Jan 30 1964

William I. Sullivan, Clerk



*Appendix***Appendix B**

*In the District Court of Appeal of the State of California*

*First Appellate District—Division One*

1 Civil 20576

Department of Mental Hygiene of the  
State of California,  
Plaintiff and Respondent,

v.

Evelyn Kirchner, Administratrix of the  
Estate of Ellinor Green Vance,  
Defendant and Appellant.

**OPINION**

Defendant Evelyn Kirchner, administratrix of the estate of Ellinor Green Vance, appeals from a judgment on the pleadings entered against her and in favor of the plaintiff Department of Mental Hygiene of the State of California for the sum of \$7,554.22 and costs for the care, support, maintenance and medical attention of Auguste Schaeche, mother of defendant's intestate, in a state institution for the mentally ill.

Plaintiff's complaint filed April 19, 1961, alleges in substance: That on January 15, 1958, Mrs. Schaeche was duly adjudged mentally ill and committed to Agnews State Hospital where ever since said date she has been, and now is, a patient; that Ellinor Vance was Mrs. Schaeche's daughter and as such responsible for her care and maintenance at the above hospital; that pursuant to section 6651 of the Welfare and Institutions Code, the Director of Mental Hygiene determined the rate for the care and maintenance of Mrs. Schaeche and said charges were made continuously

for every month said incompetent was a patient; that for the period August 25, 1956, through August 24, 1960, there became due and owing the plaintiff department for the care and maintenance of said incompetent the sum of \$7,554.22, no part of which has been paid; that the daughter died on August 25, 1960, and the defendant is the duly appointed, qualified and acting administratrix of her estate; that on November 3, 1960, the plaintiff filed in the daughter's estate, its creditor's claim for \$7,554.22 for the care and maintenance for the above period of time, which claim was rejected by the defendant administratrix on January 25, 1961; and that the above amount of \$7,554.22 is due, owing and unpaid.

Defendant's answer directly controverts only two paragraphs of the complaint: that alleging the daughter's legal responsibility for the care and attention furnished the mother at Agnews State Hospital and the final paragraph alleging the outstanding indebtedness from the daughter's administratrix, defendant herein. In the answer, therefore, defendant denies that the decedent was legally responsible for such care and maintenance and denies that she, as administratrix, is indebted to the plaintiff in any amount. Defendant by failure to deny them admits the remaining allegations of the complaint.<sup>1</sup> However the answer also sets forth two further and separate defenses in substance as follows: That on October 9, 1956, Ellinor Vance was appointed and qualified as the guardian of the estate of August Schaeche, an incompetent person; that on October

1. It should be noted therefore that the defendant admits the allegations that the Director of Mental Hygiene determined the rate and made continuous monthly charges for the care and maintenance of the incompetent, that for the period involved a total of \$7,554.22 became due and owing to the department, and that no part of said sum was paid.

23, 1956, on petition of the plaintiff department filed in such guardianship proceeding, the court made its order giving the department an equitable lien on the estate of the incompetent for \$6,425 for accrued charges for care, maintenance and medical attention for the period ending September 30, 1958, and for such other sums as may become due in the future; that after the death of Ellinor Vance on August 25, 1960, and on January 16, 1961, the defendant Evelyn Kirchner was appointed guardian of the estate of Auguste Schaeche; that said defendant as such guardian thereafter sold certain real property of the guardianship estate for the net amount of \$10,903.35, which amount is on deposit at a local title company; that defendant as guardian of the estate of said incompetent<sup>2</sup> requested of the plaintiff department an itemized statement of the amount due for the care and maintenance of the incompetent so that such amount could be presented to the court and paid, but that the plaintiff refused and continues to refuse to render such statement; that because of such refusal "plaintiff should be estopped" from asserting its claim against the estate of Ellinor Vance; that, additionally, the plaintiff's rights have been adjudicated by the order made in the guardianship proceeding on October 23, 1958.

Plaintiff moved for judgment on the pleadings on the ground that there was no defense to its action. Defendant filed a similar motion on the ground that the complaint failed to state facts sufficient to constitute a cause of action against the defendant. The court below granted plaintiff's motion and denied defendant's motion. This appeal followed.

"The plaintiff, by his motion for judgment on the plead-

2. It should be noted that after January 16, 1961, Evelyn Kirchner defendant herein was not only administratrix of the estate of the daughter (Ellinor Vance) but also guardian of the estate of the mother (Auguste Schaeche).

ings, may recover judgment without the introduction of any evidence if his complaint states facts sufficient to constitute a cause of action, and if the answer . . . neither raises any material issue nor states a defense—that is, where the answer expressly or substantially admits or does not sufficiently deny all the material allegations of the complaint, and sets up no new matter sufficient to bar or defeat the action." (39 Cal. Jur. 2d, Pleading, § 307, pp. 420-421; see *Adjustment Corp. v. Hollywood Hardware etc. Co.* (1939) 35 Cal. App. 2d 566, 569-570.) On such a motion the allegations of the answer must be taken as true and the plaintiff admits, for the purpose of the motion, the untruth of his own allegations, so far as they have been controverted by the answer. (*Osborne v. Abels* (1939) 30 Cal. App. 2d 729, 731.)

The material allegations of the complaint before us not controverted by the defendant establish that the incompetent Auguste Schaeche was a patient at Agnews State Hospital and that charges for her care and maintenance, at rates determined according to statute, are owing and unpaid to the department in the total amount of \$7,554.22. Briefly summarized, the answer simply denies that the daughter of the incompetent was legally responsible for such indebtedness and further denies the allegation (conclusionary in form) that such amount is due, owing and unpaid from the daughter's administratrix. The answer in addition asserts that the daughter was an adult and that the mother's own guardianship estate had adequate funds to pay the indebtedness, which funds were themselves secured to plaintiff by an equitable lien. Thus the answer raises no factual issues requiring a trial but merely the legal claim of the defendant that the decedent daughter was not liable for the above charges. Plaintiff's motion for a judgment on the

pleadings was therefore an appropriate remedy to determine the basic controversy. (See *Bank of America v. Hirsch Merc. Co.* (1944) 64 Cal. App. 2d 175, 176, 181.)

Defendant contends here that (1) the estate of an adult child is not liable to the Department of Mental Hygiene for the care and maintenance of an incompetent mother in a state institution where the mother has adequate funds of her own to pay the charges therefor; and (2) the department was required to proceed against the mother's property on which it had an equitable lien. Neither contention has merit.

Section 6650 of the Welfare and Institutions Code,<sup>3</sup> in effect during the four-year period here involved, provides in relevant part: "The husband, wife, father, mother, or children of a mentally ill person or inebriate, the estates of such persons, and the guardian and administrator of the estate of such mentally ill person or inebriate, shall cause him to be properly and suitably cared for and maintained, . . . The husband, wife, father, mother, or children of a mentally ill person or inebriate, and the administrators of their estates, and the estate of such mentally ill person or inebriate, shall be liable for his care, support, and maintenance in a state institution of which he is an inmate. The liability of such persons and estates shall be a joint and several liability, . . ." (Emphasis added.)

The above statute imposes on the persons therein named an unconditional liability for the support and maintenance of a mentally ill relative in a state institution. (Dept. of Mental Hygiene v. McGilvery (1958) 50 Cal. 2d 742, 749-751; Dept. of Mental Hygiene v. Rosse (1960) 187 Cal. App. 2d 283, 286; Dept. of Mental Hygiene v. Shane (1956) 142

3. Unless otherwise indicated, all code references hereafter are to the Welfare and Institutions Code.

Cal. App. 2d Supp. 881, 883.)<sup>4</sup> It is clear that it imposes such liability on a daughter of a mentally ill person and on such daughter's estate.

Defendant argues that Ellinor Vance, being an adult daughter, had no "primary duty" to support her mother, Mrs. Schaeche, and that if any liability is to be imposed on the daughter or the daughter's estate, "it must be shown that not only the mother had no funds but that the daughter had the ability to pay."

The liability created by section 6650 is unconditionally imposed and not dependent on ability to pay. (Dept. of Mental Hygiene v. McGilvery, supra, 50 Cal. 2d 742, 749-751; Dept. of Mental Hygiene v. Mannina (1959) 168 Cal. App. 2d 215, 217.) Nor is it made dependent upon the existence of a "primary duty" to furnish support. The above statute makes no mention of such expression. It clearly imposes liability, as defendant concedes, on the estate of the mentally ill person. It also expressly provides that the liability of the persons and estates named in the statute "shall be a joint and several liability." The law is settled that where an obligation is joint and several, any or all of the persons obligated may be compelled to pay the indebtedness. A person thus liable may be sued alone without joining any others also liable. In the case at bench, therefore, it was permissible for the Department of Mental Hygiene to enforce the statutory liability against the daughter of the mentally ill person without proceeding against the mentally ill person herself. (Moreing v. Weber (1906) 3 Cal. App. 14, 21-22; McClintick v. Frame (1929) 98 Cal. App. 338, 343; Code Civ. Proc., § 383.)

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4. It has recently been held in Dept. of Mental Hygiene v. Hawley (1963) 59 A.C. 259 that the liability imposed by section 6650 does not extend to the costs of support and maintenance of a person charged with crime who at the time of trial has been determined to be insane and, trial being postponed, is detained in a state institution pending his recovery.



Defendant relies on *Guardianship of Thrasher* (1951) 105 Cal. App. 2d 768 and *Department of Mental Hygiene v. Black* (1961) 198 Cal. App. 2d 627. She claims that these cases establish that, where a person has a "primary obligation" to support an incompetent, such person becomes liable under section 6650 regardless of the ability of the estate of the incompetent to pay. However, defendant argues, since an adult daughter has no such primary duty to support an incompetent mother who has an adequate estate, no liability arises under the statute. As we have pointed out, such a conclusion is untenable in the light of the clear provisions of the statute and the decisions interpreting it. Nor are the above two cases cited by defendant in conflict with what we have said. In *Thrasher*, supra, the court in effect held that it was error for the probate court to permit a husband who was guardian of his incompetent wife to reimburse himself from the wife's estate for amounts paid by him to the Department of Mental Hygiene for support and maintenance of the wife at a state hospital. The department had objected to the settlement of the accounts on the ground that the wife's support was the personal liability of the husband. On appeal the department contended that such liability rested on two separate bases: (a) the fact that the husband was primarily responsible for the support of his wife; and (b) the fact that he had a statutory liability under section 6650 for her support in a state hospital for the mentally ill. The court gave recognition to both obligations and harmonizing all of the applicable statutes held that the husband being primarily liable for the wife's maintenance could not draw upon her estate for it. However the court did not hold, as defendant here argues, that the husband's liability on the second basis, that is under section 6650, arose *only because* of his liability on the first basis, that is, because of his "primary duty"

as a husband to support his wife. In *Black*, supra, it was held that the Department of Mental Hygiene could recover from the estate of the mother of a mentally ill person the cost of the latter's support in a state hospital. The court stated: "The incompetent's mother being a person liable for her maintenance and care (Welf. & Inst. Code, §6650), there is thus no merit to the first of appellant's contentions that the personal assets of the incompetent patient must first be exhausted before liability is imposed on responsible relatives." (198 Cal. App. 2d at p. 632.) It is clear that the court held the statute imposed liability *ex proprio vigore* and not because of any independent "primary duty" on the part of the mother to support her daughter. Neither *Thrasher* nor *Black*, therefore, restrict or qualify the express declaration of joint and several liability found in section 6650.

Nor is either of the above cases authority for the proposition urged by defendant that the estate of the mentally ill person must first be exhausted before liability under section 6650 can be imposed upon any of the other persons named in the statute. As we have already pointed out, the liability of the persons and estates named in the statute is unconditional and absolute (*Dept. of Mental Hygiene v. McGilvery*, supra, 50 Cal. 2d 742) and "joint and several liability" (§ 6650). It is therefore unimportant that the estate of the mentally ill person can be resorted to and unnecessary that such action first be taken. The contention here made by defendant that the assets of the incompetent must be first exhausted was flatly rejected, as noted above, in *Department of Mental Hygiene v. Black*, supra, 198 Cal. App. 2d 627, 632.

We observe that such was not always the law. After the 1941 amendment of section 6650 (Stats. 1941, ch. 916, § 1, p. 2503) that portion of the statute pertinent here read

substantially as it now reads except that it then provided: "The liability of such persons and estates shall be a joint and several liability *except that where the insane person or inebriate has an estate such estate shall be exhausted before liability passes to the relatives.*" (Emphasis added.) The 1943 amendment to the statute (Stats. 1943, ch. 1052, § 1, p. 2991) omitted the above italicized language. As was stated in *People v. Valentine* (1946) 28 Cal. App. 2d 121, 142: "It is ordinarily to be presumed that the Legislature by deleting an express provision of a statute intended a substantial change in the law. [Citation.] It has been repeatedly declared that where changes have been introduced by amendment it is not to be assumed that they were without design and, further, that by substantially amending a statute the Legislature demonstrates an intent to change the pre-existing law."

Defendant's final claim, made without analysis or citation of authority, that the instant judgment constitutes the taking of her property without due process and a denial of the equal protection of the laws need not detain us. Such claims were raised and set at rest in *Department of Mental Hygiene v. McGilvery*, supra, 50 Cal. 2d 742, 754-761.

We turn to the defendant's second contention on appeal. She argues: The plaintiff petitioned for and secured in the guardianship proceedings of Mrs. Schaeche an equitable lien on the estate of the incompetent for accrued charges in the sum of \$6,425 and also for future charges. Since this lien is still in effect, the plaintiff Department of Mental Hygiene must proceed against such security in accordance with the "one form of action" rule prescribed by section 726 of the Code of Civil Procedure and therefore is precluded from proceeding against another liable on the obligation, namely this defendant. We find no merit in the above argument.

To support her position, the defendant is content to assert that the equitable lien here involved is the same security as a mortgage citing *Estate of Moore* (1955)-135 Cal. App. 2d 122, 131, in which the court quoted from *Childs etc. Co. v. Shelburne Realty Co.*, (1943) 23 Cal. 2d 263, 268: "a mortgagee also has a security interest in the nature of an equitable lien." We are not favored with any further analysis of the legal equation which defendant thus proposes. Nor does defendant cite us to any authority holding that an equitable lien of the kind presented here falls within the pertinent statute.

Plaintiff claims that the instant equitable lien resembles more a judgment lien than a mortgage, since both the equitable lien and the judgment lien are nonconsensual and are designed to expand the creditor's remedies rather than to contract them as does section 726 of the Code of Civil Procedure. Plaintiff also points out: Code of Civil Procedure section 726 does not encompass all liens but by its terms prescribes the "one form of action" rule for the recovery of a debt or enforcement of a right "secured by mortgage upon real or personal property." (Emphasis added.) It later encompassed trust deeds as a result of the decision in *Bank of Italy etc. Assn. v. Bentley* (1933) 217 Cal. 644. It has been held not to apply to a vendor's lien (*Jones v. Evans* (1907) 6 Cal. App. 88), to a judgment lien (*Lisenbee v. Lisenbee* (1919) 42 Cal. App. 567) or to a mechanic's lien (*Martin v. Becker* (1915) 169 Cal. 301), the creditor not being required in any of such instances to first exhaust his security. We think plaintiff's analysis of the nature of the equitable lien before us, made in the light of the above precedents, is sound. Neither of the parties has referred us to, nor has our own research disclosed, any case holding that such lien falls within the purview of the statute. In view

of the above authorities, we are of the opinion that it does not.

However, even if we assume, *arguendo*, that the instant lien falls within the statute in question, we fail to see how this would give support to the position defendant takes. It is well settled that section 726 of the Code of Civil Procedure is for the protection of the mortgagor and that the liability of persons independently obligated to pay the same debt may be enforced without first resorting to the mortgage security. (Loeb v. Christie (1936) 6 Cal. 2d 416, 418 and cases there cited; Stephenson v. Lawn (1957) 155 Cal. App. 2d 669, 671.) Appel v. Hubbard (1957) 155 Cal. App. 2d 639 cited by defendant is not in conflict with the foregoing rule. The only person coming within the protective provisions of the statute is the mortgagor or, as the *Stephenson* case uses the term, the principal debtor, which corresponds here to the owner of the lien property, the incompetent Auguste Schaeche. The instant action is not against Mrs. Schaeche.

The judgment is affirmed.

Sullivan, J.

WE CONCUR:

Bray, P. J.

Molinari, J.

Filed—Dist. Court of Appeal—First Dist., Mar. 15, 1963  
Lawrence R. Elkington, Clerk

## Appendix C

STATES HAVING STATUTES SIMILAR TO CALIFORNIA WELFARE  
AND INSTITUTIONS CODE SECTION 6650

State	Citation to Statute
Alabama	Code of Ala., Tit. 45, § 257 (1958)
Alaska	Alaska Stat. § 47.30, 270 (1962)
Arkansas	Ark. Stats. (1947) 59-230
Colorado	Colo. Rev. Stats. (1953) Art. 1, Chap. 71, § 15
Connecticut	Conn. Gen. Stats. (1945) Chap. 119, § 2663.
Delaware	Del. Code Chap. 51, Tit. 16, § 5127.
Idaho	Idaho Code, § 66-354
Illinois	Ill. Ann. Stat. Chap. 91½, § 9-19
Indiana	Ann. Ind. Stat. Tit. 22, § 401(a)
Iowa	Iowa Code Ann. § 230.15 (1946)
Kansas	Kan. Gen. Stat. (1957 Supp.) Chap. 59, § 2006
Kentucky	K.R.S. (1955) 203.080
Louisiana	La. Rev. Stat. § 143 et seq. (1952)
Maine	Rev. Stats. Man., Chap. 27, § 135 (1954)
Maryland	Md. Code Ann. (1957) Art. 59, § 5
Massachusetts	Ann. Laws Mass. (1957) Chap. 123, § 96
Michigan	Mich. Stats. Ann. (1956) Chap. 127, Art. 14, § 16
Minnesota	Minn. Stats. (1953) § 526.01
Mississippi	Miss. Code (1942) § 6909-13
Montana	Rev. Code Mont. (1957 Supp.) Tit. 38, § 214
Nebraska	Neb. Rev. Stats. (1943) § 83-352
Nevada	Nev. Rev. Stats. 433.370
New Hampshire	N. H. Rev. Stats. Ann. (1955) § 8.41
New Jersey	Rev. Stats. N. J. (1937) 30:4-66
New York	Consolidated Laws N. Y. Mental Hygiene Law, § 24, subd. 2; § 80
North Carolina	Gen. Stats. N. C. § 143-121 (1958)



State	Citation to Statute
North Dakota	N. D. Century Code § 25-09-04 (1963)
Ohio	Ohio Rev. Code (1957 Supp.) Tit. 51, § 5121.06
Oregon	Ore. Rev. Stats. (1955 Supp.) § 428.101
Pennsylvania	Penn. Stats. Ann. Tit. 50, § 1361
Rhode Island	Gen. Laws R. I. (1956) § 26-3-17
South Carolina	Code of Laws, S. C., § 32-1028 (1962)
South Dakota	S.D.C. § 30.01A06 (1960)
Tennessee	Tenn. Code § 33-629
Texas	Tex. Ann. Stat., Art. 3196A (1952)
Utah	Utah Code Ann. § 64-7-6 (1953)
Vermont	Vt. Stats. (1947 Rev.) Chap. 281-6679
Virginia	Code of Va. (1956) § 37-125.1
Washington	Rev. Code of Wash., § 71.02.230
West Virginia	Code W. Va. § 2672
Wisconsin	Wis. Stats. Ann. § 52.01 (1953)
Wyoming	Wyo. Stats. § 25-81 (1963)
District of Columbia	Title 21, § 318
Commonwealth of Puerto Rico	Laws of Puerto Rico, Tit. 24, § 147e

### EXCERPTED PORTIONS OF SIMILAR LAWS IN OTHER STATES

#### New York Mental Hygiene Laws § 80.

"The father, mother, husband, wife and children of a mentally ill person, if of sufficient ability, and the committee or guardian of his person and estate, if his estate is sufficient for the purpose, shall cause him to be properly and suitably cared for and maintained."

#### Illinois Statutes, § 9-19.

"If such patient is unable to pay, or if the estate of such patient is insufficient, the spouse of such patient, then the

parent or parents, child or children of such patient is liable for the payment of such sums, . . ."

**Ohio, § 5121.06.**

"(A) The following persons are jointly and severally liable for the support of a patient in a benevolent institution under the control of the department of mental hygiene and correction:

- (1) The patient or his estate;
- (2) The patient's husband or wife;
- (3) A minor patient's father or mother, or both;
- (4) The patient's adult sons and daughters;
- (5) An adult patient's father or mother or both."

**Vernon Texas Civil Statutes, Art. 3196a, § 2.**

"Sec. 2. Where the patient has no sufficient estate of his own, he shall be maintained at the expense:

Of the husband or wife of such person, if able to do so;

Of the father or mother of such person, if able to do so."

**Appendix D****PERTINENT STATUTORY PROVISIONS****California Welfare and Institutions Code****Article 5. Property and Support of Patients**

6650. The husband, wife, father, mother, or children of a mentally ill person or inebriate, the estates of such persons, and the guardian and administrator of the estate of such mentally ill person or inebriate, shall cause him to be properly and suitably cared for and maintained, and shall pay the costs and charges of his transportation to a state institution for the mentally ill or inebriates. The husband, wife, father, mother, or children of a mentally ill person or inebriate, and the administrators of their estates, and the estate of such mentally ill person or inebriate, shall be liable for his care, support, and maintenance in a state institution of which he is an inmate. The liability of such persons and estates shall be a joint and several liability and such liability shall exist whether the mentally ill person or inebriate has become an inmate of a state institution pursuant to the provisions of this code or pursuant to the provisions of Sections 1026, 1368, 1369, 1370, and 1372 of the Penal Code.

(Amended by Stats. 1941, Ch. 916, by Stats. 1943, Ch. 1052, by Stats. 1945, Ch. 247, and by Stats. 1947, Ch. 625.)

6651. The rate for the care, support, and maintenance of all mentally ill persons and inebriates at the state hospitals for the mentally ill where there is liability to pay for such care, support, and maintenance, shall be reviewed each fiscal year and fixed at the statewide average per capita cost of maintaining patients in all state hospitals, as determined by the Director of Mental Hygiene. The rate thus fixed shall continue in effect until a new rate is fixed. The Director of Mental Hygiene may reduce, cancel or remit the amount

to be paid by the estate or the relatives, as the case may be, liable for the care, support, and maintenance of any mentally ill person or inebriate who is a patient of a state hospital for the mentally ill, on satisfactory proof that the estate or relatives, as the case may be, are unable to pay the cost of such care, support, and maintenance or that the amount is uncollectible. In any case where there has been a payment under this section, and such payment or any part thereof should be refunded because of the death, leave of absence, or discharge of any patient of such hospital, such amount shall be paid by the hospital or the Department of Mental Hygiene to the person who made the payment upon demand, and in the statement to the Controller the amounts refunded shall be itemized and the aggregate deducted from the amount to be paid into the State Treasury, as provided by law. If any mentally ill person or inebriate dies at any time while his estate is liable for his care, support, and maintenance and other expenses at a state hospital, the claim for the amount due may be presented to the executor or administrator of his estate, and paid as a preferred claim, with the same rank in order of preference, as claims for expenses of last illness.

(Amended by Stats. 1939, Ch. 442, by Stats. 1941, Ch. 913, by Stats. 1943, Ch. 1052, by Stats. 1953, Ch. 549, by Stats. 1954, Ch. 3, by Stats. 1959, Ch. 186; and by Stats. 1961, Ch. 176.)

6653. The department shall, following the admission of a patient into a State hospital for the insane, cause an investigation to be made to determine the moneys, property, or interest in property, if any, the patient has, and whether he has a duly appointed and acting guardian to protect his property and his property interests. The department shall also make an investigation to determine whether the patient has any relative or relatives responsible under the provi-

sions of Section 6650 for the payment of the costs of transportation and maintenance, and shall ascertain the financial condition of such relative or relatives to determine whether in each case such relative or relatives are in fact financially able to pay such charges. All reports in connection with such investigations, together with the findings of the department, shall be records of the department, and may be inspected by interested relatives, their agents, or representatives at any time upon application.

6655. If any person committed to a State mental hospital has sufficient estate for the purpose, the guardian of his estate shall pay for his care, support, maintenance, and necessary expenses at the mental hospital to the extent of the estate. Such payment may be enforced by the order of the judge of the superior court where the guardianship proceedings are pending. On the filing of a petition therein by the department, showing that the guardian has failed, refused, or neglected to pay for such care, support, maintenance, and expenses, the court, by order, shall direct the payment by the guardian. Such order may be enforced in the same manner as are other orders of the court.

If at any time there is not sufficient money on hand in the estate of a committed person to pay the claim of a State mental hospital for his care, support, maintenance, and expenses therein, the court may, on petition of the guardian of the estate, or if the guardian fails, refuses, or neglects to apply, on the petition of the department, make an order directing the guardian to sell so much of the other personal or real property or both, of the person as is necessary to pay for the care, support, maintenance, and expenses of the person at the mental hospital. From the proceeds of such sale, the guardian shall pay the amount due for the care, support, maintenance, and expenses at the mental hospital, and also such other charges as are allowed by law.

Payment for the care, support, maintenance, and expenses of person at a State hospital shall not be exacted, however, if there is likelihood of the patient's recovery or release from the hospital and payment will reduce his estate to such an extent that he is likely to become a burden on the community in the event of his discharge from the hospital. If a certificate from the medical superintendent of the State hospital in which the person is confined as a patient is filed in the office of the county clerk with the papers in the guardianship proceedings of the patient, in which certificate the medical superintendent states that the patient is suffering from a chronic form of insanity, and that in his opinion a recovery is beyond reasonable hope and that the patient will in all probability continue to be a charge in a State hospital until death, such certificate shall be prima facie evidence that the patient is not likely to recover or to be released from the hospital, and the guardian shall pay the amount due for his care, support, maintenance, and expenses at the hospital and such other charges as are allowed by law out of any moneys of the estate in his possession.

(Amended by Stats. 1941, Ch. 917, and by Stats. 1943, Ch. 1052.)

## **CONSTITUTION OF THE UNITED STATES**

### **Amendment XIV**

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.



Office-Supreme Court, U.S.  
**FILED**

**MAY 23 1964**

JOHN F. DAVIS, CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1963.

NO. ~~111~~

DEPARTMENT OF MENTAL HYGIENE OF THE  
STATE OF CALIFORNIA,

*Petitioner,*

vs.

EVELYN KIRCHNER, Administratrix of the Estate of  
ELLINOR GREEN VANCE,

*Respondent.*

(Petition for Writ of Certiorari to the  
Supreme Court of the State of California)

**AMICUS CURIAE BRIEF OF THE STATE OF ILLINOIS  
IN SUPPORT OF THE PETITION FOR WRIT OF  
CERTIORARI TO THE SUPREME COURT OF THE  
STATE OF CALIFORNIA, FILED BY THE STATE OF  
CALIFORNIA.**

WILLIAM G. CLARK,

Attorney General of the State of Illinois,

*Attorney for the State of Illinois,  
Amicus Curiae.*

RICHARD E. FRIEDMAN,

First Assistant Attorney General of Illinois,

RAYMOND S. SARNOV,

JEROME F. GOLDBERG,

Assistant Attorneys General,

*Of Counsel.*

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1963.

\_\_\_\_\_  
**NO.** \_\_\_\_\_  
\_\_\_\_\_

DEPARTMENT OF MENTAL HYGIENE OF THE  
STATE OF CALIFORNIA,

*Petitioner,*

**VS.**

EVELYN KIRCHNER, Administratrix of the Estate of  
ELLINOR GREEN VANCE,

*Respondent.*

\_\_\_\_\_  
(Petition for Writ of Certiorari to the  
Supreme Court of the State of California)

\_\_\_\_\_  
**AMICUS CURIAE BRIEF OF THE STATE OF ILLINOIS  
IN SUPPORT OF THE PETITION FOR WRIT OF  
CERTIORARI TO THE SUPREME COURT OF THE  
STATE OF CALIFORNIA, FILED BY THE STATE OF  
CALIFORNIA.**

\_\_\_\_\_  
The presently standing opinion of the Supreme Court of  
the State of California, reported in 60 AC 704, 388 P. (2d)  
720, 36 Cal. Rptr. 488 (1964), seriously places in jeopardy

the validity of pertinent statutes of the State of Illinois which are similar in language but identical in principle to the California statute considered by the Supreme Court of the State of California. The validity of the Illinois laws is beclouded as a result of the opinion and decision of the Supreme Court of the State of California which so broadly applies the Equal Protection Clause of the Constitution of the United States so as to bring within its prohibition the classification of persons responsible for the care and maintenance of patients in State Institutions under the California statutes and likewise those of the State of Illinois.

The applicable Illinois statutes are found in Chapter 914, Ill. Rev. Stats. 1963, to-wit:

"9-19. Liability for maintenance charges in state hospital. § 9-19. Each patient receiving treatment in a Mental Health program of the Department and the estate of such patient is liable for the payment of sums representing charges for treatment of such patient at a rate to be determined by the Department in accordance with the provisions of Section 9-20 of this Act. If such patient is unable to pay or if the estate of such patient is insufficient, the responsible relatives, are severally liable for the payment of such sums, or for the balance due in case less than the amount prescribed under this Act has been paid, provided that: the maximum treatment charges for each patient assessed against reasonable relatives collectively shall not exceed \$50 per month; the liability of each responsible relative for payment of treatment charges shall cease when payments on the basis of financial ability have been made for a total of 12 years for any patient, and any portion of such 12-year period, during which a responsible relative has been determined by the Department to be financially unable to pay any treatment charges, shall be included in fixing the total period of liability; no child shall be liable under this Act for treatment of a parent who wilfully failed to contribute to the support of such child for a period of at least 5 years dur-

ing his minority; and that no wife shall be liable under this Act for the treatment of a husband who wilfully failed to contribute to her support for a period of 5 years immediately preceding his commitment. Any child or wife claiming exemption because of such wilful failure to support during any such 5-year period shall be required to furnish the Department with clear and convincing evidence substantiating such claim. As amended by act approved May 2, 1963. L. 1963, p. ...., H. B. No. 392. Effective Jan. 1, 1964."

Responsible relatives are defined in the Illinois Act under Section 1-17 as follows:

"1-17. Responsible relatives. § 1-17. 'Responsible Relatives', when used in this Act, means the spouse, parent or parents, child or children of patients receiving care and service in Mental Health programs of the Department. Added by act approved May 2, 1963. L. 1963, p. ...., H. B. No. 392. Effective Jan. 1, 1964."

It thus appears that the thrust of the opinion and decision of the Supreme Court of the State of California seriously impugns the substantially similar statutes of the State of Illinois. The Attorney General of the State of Illinois is deeply concerned about the grave issues raised in this case and presented in the instant petition for certiorari filed in this court.

It is respectfully submitted that the State of Illinois, by William G. Clark, Attorney General of the State of Illinois, hereby adopts and joins in the position, reasons advanced for the granting of the petition for certiorari and argu-

ment of the State of California in the above entitled matter,  
as contained in the petition for certiorari filed in this court.

Respectfully submitted,

WILLIAM G. CLARK,

Attorney General of the State of Illinois,  
160 North La Salle Street, Suite 900,  
Chicago (1), Illinois (Financial 6-2000),

*Attorney for the State of Illinois,  
Amicus Curiae.*

RICHARD E. FRIEDMAN,

First Assistant Attorney General of Illinois,

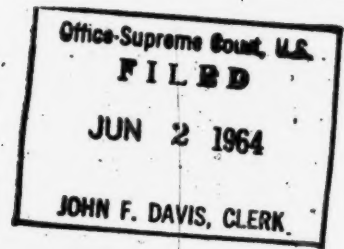
RAYMOND S. SARNOV,

JEROME F. GOLDBERG,

Assistant Attorneys General,


*Of Counsel.*

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IN THE  
**Supreme Court of the United States**

No.  October Term, 1963

DEPARTMENT OF MENTAL HYGIENE OF  
THE STATE OF CALIFORNIA,

*Petitioner*

v.

EVELYN KIRCHNER, ADMINISTRATRIX OF  
THE ESTATE OF ELLINOR GREEN VANCE,  
*Respondent*

**BRIEF OF THE COMMONWEALTH OF PENN-  
SYLVANIA, AMICUS CURIAE, IN SUPPORT  
OF PETITION OF THE DEPARTMENT OF  
MENTAL HYGIENE OF THE STATE OF CALI-  
FORNIA FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF THE STATE OF CALI-  
FORNIA**

EDGAR R. CASPER  
*Deputy Attorney General*

WALTER E. ALESSANDRONI  
*Attorney General*

Attorneys for Common-  
wealth of Pennsylvania,  
Amicus Curiae

State Capitol  
Harrisburg, Pa.



**BRIEF OF THE COMMONWEALTH OF PENNSYLVANIA, AMICUS CURIAE, IN SUPPORT OF PETITION OF THE DEPARTMENT OF MENTAL HYGIENE OF THE STATE OF CALIFORNIA FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA**

---

The Commonwealth of Pennsylvania, as Amicus Curiae, respectfully supports the Petition of the State of California, Department of Mental Hygiene (hereinafter referred to as "Petition"), praying that a Writ of Certiorari issue to review the judgment of the Supreme Court of the State of California entered January 30, 1964, rehearing denied February 26, 1964.

For Opinions Below, Jurisdiction, Questions Presented, Statutes Involved, Statement of the Case and How the Federal Question Arose, see Petition, pages 1 to 6.

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**INTEREST OF THE COMMONWEALTH OF PENNSYLVANIA**

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While the Commonwealth of Pennsylvania endorses the Reasons Why a Writ of Certiorari Should Be Granted, as stated in the Petition at pages 6 to 23, this brief is respectfully submitted for the purpose of acquainting this Honorable Court with the substantial interest of the Commonwealth of Pennsylvania in a prompt and final judicial determination of the constitutional issue raised in this case.

*Argument*

The law of Pennsylvania imposes liability on patients and their relatives for costs of care in State Mental Hospitals and State Schools for epileptics and the retarded, see Vol. 71 Purdon's Penna. Statutes Annotated, Sections 1781, 1783; Vol. 62 Purdon's Penna. Statutes Annotated, Sections 1973, 1974; Vol. 50 Purdon's Penna. Statutes Annotated, Sections 1361, 1401.

Collections from patients and their relatives pursuant to these provisions are substantial. For example, for the period July 1, 1962 to June 30, 1963, the Commonwealth of Pennsylvania collected from patients and their relatives for costs of care in these institutions a total of \$14,179,-489.96.

It appears inevitable that henceforth and until such time as the constitutional issue presented by this case is finally resolved, the Commonwealth claims against relatives will be contested on the basis of the decision of the Supreme Court of the State of California in this case. For example, on May 4, 1964, in *Pennhurst State School v. Estate of Samuel Goodhartz*, No. A-68, September Term, 1963, the Supreme Court of New Jersey, in a suit for reimbursement by the Commonwealth of Pennsylvania against the estate of the deceased father of its patient, reversed a dismissal of the suit based on procedural grounds. In remanding the case for trial, the Court said:

"The parties may there raise any and all issues they determine appropriate. \* \* \* Thus, they may seek determination, inter alia, of the important constitutional and jurisdictional questions dealt with in *The Department of Mental Hygiene v. Kirchner*, 36 Cal. Rptr., 488, 388 P. 2d 720 (1964) and *Calif. v. Copus*, [158 Texas 196, 309 S.W. 2d 277, cert. denied, 356 U. S. 967]".

*Argument*

## CONCLUSION

For the foregoing reasons, the Commonwealth of Pennsylvania respectfully submits that certiorari should issue to review the decision of the court below.

Respectfully submitted,

EDGAR R. CASPER

*Deputy Attorney General*

WALTER E. ALESSANDRONI

*Attorney General*

Attorneys for Commonwealth  
of Pennsylvania, Amicus  
Curiae

Dated: May 27, 1964

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(1711)

U. S. Supreme Court, U. S.

**FILED**

**JAN 5 1911**

# **Supreme Court of the United States**

**No. 1111**

**DEPARTMENT OF MENTAL HYGIENE OF THE  
STATE OF CALIFORNIA,**

*Petitioner,*

**vs.**

**EVELYN KITCHNER, Administratrix of the Estate of  
ELLINGER GREEN VANCE,**

*Respondent.*

**ON PETITION FOR WRIT OF HABEAS CORPUS TO THE SUPREME COURT  
OF CALIFORNIA**

**BRIEF OF ATTORNEY GENERAL OF THE STATE  
OF NEW YORK, AMICUS CURIAE, IN SUPPORT  
OF PETITION**

**LOUIS J. LEFKOWITZ**  
Attorney General of the State  
of New York  
*Amicus Curiae*  
The Capital  
Albany, New York

**PAXSON BLAIR**  
Solicitor General

**BOTH KIMBLE TOCH**  
Assistant Solicitor General

*of Counsel*

# Supreme Court of the United States

No. 1141—October Term, 1963

DEPARTMENT OF MENTAL HYGIENE OF THE  
STATE OF CALIFORNIA,

*Petitioner,*

*vs.*

EVELYN KIRCHNER, Administratrix of the Estate of  
ELLINOR GREEN VANCE,

*Respondent.*

## BRIEF OF ATTORNEY GENERAL OF THE STATE OF NEW YORK, AMICUS CURIAE, IN SUPPORT OF PETITION

(1)

The Attorney General of the State of New York urges that the petition for certiorari be granted because the decision of the Supreme Court of California (388 Pac. 2d 720) in invalidating a California statute (Welfare and Institutions Code, § 6650) imposing upon near relatives<sup>1</sup> liability for the support of persons in mental institutions has used in its opinion language broad enough to invalidate a New York statute of similar scope and effect.

The Court said (p. 5 of Appendix to Petitioner's brief):

"Whether the commitment is incidental to an alleged violation of a penal statute, as in *Hawley* [59 Cal. 2d 247], or is essentially a civil commitment as in the

<sup>1</sup> " \* \* \* husband, wife, father, mother, or children of a mentally ill person \* \* \* shall be liable for his care, support, and maintenance in a state institution of which he is an inmate."

instant case, the purposes of confinement and treatment or care in either case encompass the protection of society from the confined person, and his own protection and possible reclamation as a productive member of the body politic. Hence the cost of maintaining the state institution, including provision of adequate care for its inmates, cannot be arbitrarily charged to one class in the society; such assessment violates the equal protection clause."

## (2)

The Mental Hygiene Law of the State of New York provides (§ 24, subd. 2):

"2. The committee, guardian, or trustee of a trust fund established for the support of a patient or any fiduciary or payee of funds for and on behalf of a patient shall be jointly and severally liable and responsible for payments for services, care, treatment and maintenance provided for in the preceding subdivision, from the date of admission of such patient or from the date such services, care, treatment and maintenance were provided to the extent of such funds received or held for and on behalf of such patient and the husband, wife, father, mother and children of such patient, if such relatives are of sufficient ability, shall also be jointly and severally liable and responsible for such payments, any other provision or rule of law to the contrary notwithstanding."

## (3)

It is pointed out in Petitioner's brief (p. 7) that the provisions for the support by relatives of patients in mental institutions which the decision below has stricken down are found in substantially the same form in the statutes of no less than forty-two states, plus the District of Columbia and the Commonwealth of Puerto Rico. The statutes are listed at page 21 of the Appendix to Petitioner's brief.



The decision below also raises serious obstacles in the path of any State which invokes the Uniform Support of Dependents Law (N. Y. Domestic Relations Law § 32).<sup>2</sup>

The California and the New York statutes do involve some extension of the common law principles relating to the support by close relatives of the mentally ill. But at the common law a husband was liable for the support of his mentally ill wife in a public institution. *Matter of Fox*, 250 App. Div. 31 (2nd Dept., 1937), aff'd 275 N. Y. 604 (1937).

The decision below thus contravenes widely prevalent statutory schemes for the exoneration of the public treasury from the burden of supporting patients in State institutions. In New York as much as ten million dollars are collected yearly from responsible relatives of patients. We submit that the public interest strongly favors the granting of the petition.

<sup>2</sup> For the extent to which this statute has been adopted and invoked, see Note, 48 Cornell L. Q. 541 (Spring, 1963).

**CONCLUSION**

**The petition for certiorari should be granted.**

**June 3, 1964.**

Respectfully submitted,

**LOUIS J. LEFKOWITZ**  
Attorney General of the State  
of New York  
*Amicus Curiae*

**PAXTON BLAIR**  
Solicitor General

**RUTH KESSLER TOCH**  
Assistant Solicitor General

*of Counsel*

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<b>Cases</b>	<b>Pages</b>
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**In the Supreme Court**  
**OF THE**  
**United States**

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OCTOBER TERM, 1963

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No. 1141

---

DEPARTMENT OF MENTAL HYGIENE OF  
THE STATE OF CALIFORNIA,  
*Petitioner,*

vs.

EVELYN KIRCHNER, administratrix of  
the Estate of Vance,  
*Respondent.*

**OPPOSING BRIEF OF RESPONDENT**

---

Evelyn Kirchner, Administratrix of the Estate of Eleanor Green Vance, the respondent herein, respectfully opposes a review of the judgment of the Supreme Court of California entered in the above case on January 30, 1964, and answers the petition of the Department of Mental Hygiene of the State of Cali-

for California and the briefs of amici curiae filed herein by the Attorney General of the State of Illinois, the Attorney General of the State of New York, and the Attorney General of the State of Pennsylvania, as follows:

#### **OPINIONS BELOW**

The opinion of the Supreme Court of the State of California is reported in 60 A.C. 704, 388 P.2d 720, 36 Cal. Rptr. 488 (1964) and is appended to the petition.<sup>1</sup>

#### **QUESTIONS PRESENTED.**

The questions presented in petitioner's petition on file herein are hypothetical, and they are not the questions presented to or considered by the Supreme Court of California.

The questions that were presented to the Supreme Court of California and considered by said Court are set forth in Appellant's Petition For A Hearing By The Supreme Court at page 2 thereof, and they are stated as follows:

"(a) Does Welf. C. 6650 impose an unconditional and absolute liability upon an adult child, or her estate, for the care of an incompetent mother by the Department of Mental Hygiene where the mother has adequate funds of her own to pay the charges therefor?

---

<sup>1</sup>Citations to this opinion will be cited as "Op-1" etc., in the Appendix to the Petition.

(b) If the answer thereto is in the affirmative would a judgment under such a statute constitute the taking of defendant's property without due process and a denial of the equal protection of the law?"

The California Supreme Court answered these questions as follows:

"Section 6650 by its terms imposes absolute liability upon, and does not even purport to vest in, the servient relatives any right of control over, or to recoup from the assets of the patient. A statute obviously violates the equal protection clause if it selects one particular class of persons for a species of taxation and no rational basis supports such classification. See *Blumenthal v. Board of Medical Examiners* [1962] 57 Cal. 2d 228, 237 [13]; *Bilyeu v. State Employees' Retirement System* [1962] 58 Cal.2d 618, 623 [2]). Such a concept for the state's taking of a free man's property manifestly denies him equal protection of the law." (Op-8)

#### STATUTE INVOLVED

Petitioner in its brief sets forth only part of California Welfare and Institutions Code section 6650. A reading of this part of the section alone may be misleading; so we are therefore setting forth at length herein the full text of the section.

"6650. The husband, wife, father, mother, or children of a mentally ill person or inebriate, the estates of such persons, and the guardian and administrator of the estate of such mental ill



4

person or inebriate, shall cause him to be properly and suitably cared for and maintained, and shall pay the costs and charges of his transportation to a state institution for the mentally ill or inebriates. The husband, wife, father, mother, or children of a mentally ill person or inebriate, and the administrators of their estates, and the estate of such mentally ill person or inebriate, shall be liable for his care, support, and maintenance in a state institution of which he is an inmate. The liability of such persons and estates shall be a joint and several liability and such liability shall exist whether the mentally ill person or inebriate has become an inmate of a state institution pursuant to the provisions of this code or pursuant to the provisions of Sections 1026, 1368, 1369, 1370, and 1372 of the Penal Code."

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#### **STATEMENT OF THE CASE**

The Department of Mental Hygiene brought this action against the estate of Eleanor Green Vance, a deceased adult daughter of Auguste Schaeche, a committed patient at Agnew State Hospital. (CT 3:7-17.) The purpose of the action was to obtain reimbursement for the care provided Auguste Schaeche from August 25, 1956 to August 24, 1960, or for Seven Thousand Five Hundred Fifty-Four Dollars Twenty-Two Cents (\$7,554.22). (CT 4:8.)

Evelyn Kirchner is the duly appointed administratrix of the Estate of Eleanor Green Vance. (CT 4:12-19.) She is also the guardian of the Estate of Auguste Schaeche, the committed incompetent.

Evelyn Kirchner, as Administratrix of the decedent's estate, on January 25, 1961, rejected the creditor's claim filed out of the Department of Mental Hygiene (CT 5:5), and then in her capacity as the Guardian of Auguste Schaeche she offered to pay the claim out of the assets of the incompetent's estate (CT 16:9-15), which said estate of the incompetent consisted of cash in the amount of Ten Thousand Nine Hundred Three Dollars (\$10,903.00). (CT 16:6-7.) The Department of Mental Hygiene refused to accept payment from the Guardian (CT 16:9-15), and in due course the Department of Mental Hygiene as plaintiff brought this action on April 16, 1961.

Defendant demurred to the complaint on the ground that no cause of action was stated in that the complaint did not allege that the incompetent had "no estate out of which the claim of plaintiff \* \* \* [could] be satisfied." (CT 7:8-11.) The demurrer was overruled (CT 11:19), and the defendant answered denying that her intestate, the daughter, "was legally responsible" for the mother's care and maintenance furnished by the state at Agnew "or any other place whatsoever" (CT 14:7-11); and further alleged that the incompetent mother herself owns (in her guardianship estate) Ten Thousand Nine Hundred Three Dollars (\$10,903.00) in cash to which resort should first be had.

Both parties moved for judgment on the pleadings; plaintiff's motion was granted and defendant's was denied.

**REASONS WHY A WRIT OF CERTIORARI  
SHOULD NOT BE GRANTED**

1. The petition sets forth a hypothetical question that was never considered by the California Supreme Court. The petitioner is asking this Court to decide moot questions. In the case of *St. Pierre v. United States* (1943) 319 U.S. 41, 87 L.Ed. 1199, this Court says:

“A Federal court is without power to decide moot questions or to give advisory opinions which cannot affect the rights of the litigants in a case before it.”

At 5 Am.Jur.2d 203, it is stated as follows:

“The function of appellate courts, like that of courts generally, is not to give opinions on merely abstract or theoretical matters, but only to decide actual controversies injuriously affecting the rights of some party to the litigation, and it has frequently been held that questions or cases which have become moot or academic are not a proper subject of review.

The policy against passing upon moot cases or questions is so strong that even laches of parties cannot prevent the dismissal of an appeal or error proceeding when the question involved has become moot.”

2. Petitioner's interpretation of California Welfare and Institutions Code section 6650 is at complete variance with the construction placed thereon by California courts, including the decision of the California Supreme Court before this Court. The said statute imposes on the husband, wife, father, mother or chil-

dren of a mentally ill person an unconditional liability for the support and maintenance of a mentally ill relative in a state institution, and this liability is joint and several. (*Dept. of Mental Hygiene v. McGilvery* [1958] 50 C.2d 742, 749-751; *Dept. of Mental Hygiene v. Rosse* [1960] 187 C.A.2d 283, 286; *Dept. of Mental Hygiene v. Shane* [1956] 142 C.A.2d Supp. 881, 883.) The liability imposed by this section being absolute is in no way correlated with the need of the patient or of the ability of the relative to pay. Nor is there any provision whereunder a contributing relative can recoup from a patient after the patient's release.

3. The California Supreme Court did not decide that the basic obligation imposed by California Welfare and Institutions Code section 6650 as being unconstitutional as contended by petitioner. The California Supreme Court in discussing the liability of a husband under the section for the care and maintenance of his committed wife says:

"In *Thrasher* it was held (pp. 776-778 [3-8] of 105 Cal. App. 2d) that the husband of an incompetent committed to a state mental hospital was under the duty to support her therein even though she had estate of her own. That case is of small help to plaintiff here; manifestly, the basic obligation and relevant status of the husband arose from the marriage contract to which he was a consenting party and no consideration was given to the question as to whether imposing liability upon one spouse for support of the other in a state institution denies equal protection of the law to the servient spouse." (Op-4)

The California Supreme Court did not answer the question whether the husband would be liable under section 6650; it reserved the question for a future decision when it is properly presented.

Even the petitioner in its Petition For Rehearing Before The Supreme Court did not contend that the Court decided the constitutionality of the basic obligation imposed by section 6650. At page 40 of said petition, petitioner therein said:

"2. Does the decision eliminate interspousal liability under section 6650?"

This problem, although adverted to in the court's opinion (See Opinion, p. 5) is left unresolved. Since liability of a spouse can be laid on a ground independent and exclusive of constitutional considerations, i.e., the marriage contract (cf. Opinion, p. 5; see also dissent of Justice Schauer, *Dept. of Mental Hygiene v. McGilvery*, 50 Cal.2d 742, 766), it would appear that such liability may justifiably be preserved."

4. Similar laws are not placed in jeopardy. At page 2 of the Amicus Curiae Brief of the Attorney General of the State of Illinois on file herein the applicable Illinois statute is set forth at length. It is clear that this Illinois statute does not impose an absolute liability upon the responsible relatives named therein. The responsibility of those relatives is conditional upon the need of the patient. The statute reads in part as follows:

"\* \* \*. If such patient is unable to pay or if the estate of such patient is insufficient, the respon-

sible relatives, are severally liable for the payment of such sums, \* \* \*."

In the case before the bench the California Welfare and Institutions Code section 6650 imposed an unconditional liability upon the adult daughter or her estate regardless of the needs of the mother or her ability to pay.

Likewise under the applicable statute of the State of New York which is set forth on page 2 of the Amicus Curiae Brief of the Attorney General of the State of New York only a conditional liability is placed on the relatives. Said section reads in part as follows:

"\* \* \*, if such relatives are of sufficient ability, shall also be jointly and severally liable and responsible for such payments, \* \* \*."

The Attorney General of the State of New York expresses his concern on page 1 of his brief over the language of the Court in the Kirchner case wherein the Court concludes that it makes no difference whether the commitment is

"\* \* \* is incidental to an alleged violation of a [penal] statute, as in Hawley (59 Cal.2d 247), or is essentially a civil commitment as in the instant case, \* \* \*."

We bring to the Court's attention that the California Legislature has found fit to impose liability in both types of commitments under the same statute. The applicable part of Welfare and Institutions Code section 6650 reads as follows:



"The liability of such persons and estates shall be a joint and several liability and such liability shall exist whether the mentally ill person or inebriate has become an inmate of a state institution pursuant to the provisions of this code or pursuant to the provisions of Sections 1026, 1368, 1369, 1370, and 1372 of the Penal Code."

Where the Legislature distinguishes between the two types of commitments and imposes separate liability for civil commitment it has been held that there is a clear basis for distinction between those who are in hospitals merely for treatment and those who are imprisoned on account of some criminal charge. (*Kough v. Hoehler* [1952] 413 Ill. 409, 109 N.E.2d 177.) But that is not the legislative rule in California.

The Attorney General of the State of Pennsylvania in his brief on file herein has not favored us with a statement of the Pennsylvania statute. Nor has he raised any issue to be answered.

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#### CONCLUSION

The rule of the decision of this can only be determined by reading the decision in the light of its facts and the issues raised. This, the petitioner and amici curiae failed to do. The petitioner has created a set of facts never considered by the California Supreme Court. On the facts upon which the Court based its decision an unconditional liability was imposed upon the servient relative even though the incompetent had an adequate estate of her own, and no right of

control over or to recoup from the assets of the incompetent were given to the relative. As stated by the Court:

"Such a concept for the state's taking of a free man's property manifestly denies him equal protection of the law."

It is respectfully submitted that the petition should be denied.

Dated, Redwood City, California,

June 9, 1964.

JOHN WALTON DINKELSPIEL,  
*Attorney for Respondent.*

ALAN A. DOUGHERTY,  
*Of Counsel.*

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**In the Supreme Court of the  
United States**

OCTOBER TERM, 1964

No. [REDACTED]

**111**

DEPARTMENT OF MENTAL HYGIENE OF THE  
STATE OF CALIFORNIA,

*Petitioner,*

vs.

EVELYN KIRCHNER, Administratrix of the  
Estate of ELLINOR GREEN VANCE,

*Respondent.*

**Reply to Opposing Brief of Respondent**

**STANLEY MOSK**

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## TABLE OF AUTHORITIES CITED

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Estate of Risse, 156 Cal. App. 2d 412 (1957).....	2
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# In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 1141

DEPARTMENT OF MENTAL HYGIENE OF THE  
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*Petitioner,*

vs.

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Estate of ELLINOR GREEN VANCE,

*Respondent.*

## Reply to Opposing Brief of Respondent

Without discussion and without supporting factual data, Respondent contends that the issue here is "moot." The contention is absurd. The final decision in this case will have a real and measurable effect on the parties litigant. The precise question to be answered is whether the daughter (through her estate) is liable for charges incurred on behalf of her mother, a mental patient in a state institution. A decision reversing the California Supreme Court will have the immediate effect of compelling the estate to satisfy the Department of Mental Hygiene's claim in the amount of \$7,554.22. Hence, any allegation of mootness is ill-founded.

Respondent next maintains that the question posed by

petitioner is hypothetical. Had the Supreme Court of California limited itself to the contentions briefed and argued by the parties prior to its decision, perhaps the present wording of the question could indeed be termed hypothetical. But the California court did not so restrict itself. It bypassed the narrow question asked by respondent, viz., whether the Department must first exhaust the patient's estate before seeking payment from relatives, in favor of ruling on the constitutionality of the entire statute.

Hence any reference to questions as they were phrased prior to the California Supreme Court's decision is misplaced. Those issues have been superseded by a holding which purports to decide the general constitutional question of whether a classification based on close family relationship is reasonable within the meaning of the equal protection clause of the Fourteenth Amendment.

Petitioner's second argument set forth at pages 6 and 7 of his Brief, is that "the liability imposed by this section [§ 6650] being absolute is in no way correlated with the need of the patient or of the ability of the relative to pay." Petitioner urges that section 6650 of the California Welfare & Institutions Code cannot be read *in vacuo*. It must be taken together with the succeeding sections of the Welfare and Institutions Code. As the court stated in *Guardianship of Thrasher*, 105 Cal. App. 2d 768, 777 (1951), "All of these sections must be considered together." (See also *Estate of Phipps*, 112 Cal. App. 2d 732, 735 (1952); *Estate of Risse*, 156 Cal. App. 2d 412 (1957).) This being so, petitioner makes reference to section 6653 of the California Welfare & Institutions Code wherein it is stated that an investigation is to be made by the department and that the department "shall ascertain the financial condition of such relative or relatives to determine whether in each case such



relative or relatives are in fact financially able to pay such charges." (See also § 6651 discussed at page 6, fn. 9 of the Petition for Certiorari.)

Respondent also states (page 7 of Respondent's Brief): "Nor is there any provision whereunder a contributing relative can recoup from a patient after the patient's release." It is true that no such provision is contained in the Welfare and Institutions Code. However, the problem is dealt with in section 1432 of the Civil Code of California which states as follows:

"A party to a joint, or joint and several obligation, who satisfies more than his share of the claim against all, may require a proportionate contribution from all the parties joined with him."

Respondent's third argument is unclear. Apparently respondent contends that section 6650<sup>1</sup> has not obliterated interspousal liability and hence the section retains its constitutionality. Whatever the thrust of this argument, a simple juxtaposition of the California Supreme Court's decision with section 6650 shows that, contrary to respondent's assertion (opposing Brief, page 7) the Supreme Court of California has unequivocally declared the basic obligation imposed by section 6650 unconstitutional.

Petitioner urges that the importance of the instant decision is manifest. No refuge can be taken in claims that it concerns only narrow questions concerning priorities. Nor can the broad implications flowing directly from the decision be obscured by contentions that the questions

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1. Respondent has charged that petitioner failed to reprint the entire text of section 6650 in its Petition for Certiorari. The charge is untrue: section 6650 and the succeeding sections which are pertinent to the issues here involved are all reprinted in full in Appendix D to the Petition, as pointed out in footnote 2 on page 3 of the Petition itself.

presented are merely hypothetical or moot. The urgency and seriousness of the instant holding are too obvious to belabor.<sup>2</sup>

Dated, San Francisco, California  
June 24, 1964.

Respectfully submitted,

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*Of Counsel.*

**(Appendix follows)**

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2. Illustrative of the concern which this decision has caused is the article appended hereto from the June 1964 issue of the Harvard Law Review. Petitioner points out that the appended article could not have been submitted earlier as the publication date followed the filing of the Petition for a Writ of Certiorari.

## APPENDIX A

from: Harvard Law Review, v. 77, no. 8, June 1964

**Constitutional Law—EQUAL PROTECTION—STATUTE COMPELLING RELATIVES TO SUPPORT PATIENTS CIVILLY COMMITTED TO STATE MENTAL HOSPITALS DECLARED UNCONSTITUTIONAL.—***Department of Mental Hygiene v. Kirchner* (Cal. 1964).

In January 1953, Mrs. Auguste Schaeche was adjudged mentally ill by a court of competent jurisdiction and committed to a California state hospital. Following the death of her daughter in August 1960, the Department of Mental Hygiene, pursuant to section 6650 of the Welfare and Institutions Code, filed a claim with the administratrix of the daughter's estate for the cost of her mother's care during the preceding four years. The claim was rejected by the administratrix—also guardian of Mrs. Schaeche's estate—who offered instead to pay the amount from the incompetent's assets of \$10,903.35. Since these assets were already subject to the Department's equitable lien of \$6,425 and the Department did not wish to reduce them further,<sup>1</sup> it rejected the offer and brought suit to recover the amount claimed from the daughter's estate. The lower court rendered judgment on the pleadings for the plaintiff. On appeal, *held*, reversed. Section 6650 denies the defendant equal protection since it compels an arbitrary class—the relatives of a mentally ill person—to support a public function. *Department of Mental Hygiene v. Kirchner*, 36 Cal. Rep. 488 (Sup. Ct. 1964).

The court's decision appears to turn on its view of civil confinement of the mentally ill as designed primarily for the protection of society and the possible rehabilitation of the

1. Cal. Welfare & Inst'n's Code § 6655 provides that payment shall not be made from the incompetent's estate if there is a likelihood that he will be released and the reduction in his estate would then make him a burden upon the community.

individual. Citing *Department of Mental Hygiene v. Hawley*,<sup>2</sup> where it was held that under section 6650 the state could not constitutionally compel a father to reimburse the state for care afforded an adult child unable to stand trial because of his mental disability, the court stated that the purposes of civil commitment are essentially equivalent to those of a commitment incidental to a penal proceeding; consequently, the cost of such commitment should properly be borne by the state. Since the court did not distinguish between persons committed because they are dangerous to the public and those committed because they are in need of care unavailable in the home or because their relatives preferred to place them under treatment, its opinion implies that the legislature could not characterize any aspect of the mental health program as being primarily concerned with the individual and his family. Accepting the court's premise that the mental health program is a public function, it follows that imposition of liability on the relatives of persons so confined is unjustified. However, since the legislature may have selected this particular class not only in the belief that the relatives derived a certain advantage from the state's treatment of the incompetent but also to preserve the traditional principles of family responsibility, the court's restricted characterization of the legislative purpose seems an abuse of its review powers, which are ordinarily confined to deciding whether the legislature has reasonably exercised its policy making discretion.<sup>3</sup> Though the court may disagree with the conception of society upon which this legislation is based, it is normally not open to a

2. 59 Cal. 2d 247, 29 Cal. Rep. 718, 379 P.2d 22 (1963).

3. See *County of Los Angeles v. La Fuente*, 20 Cal. 2d 870, 129 P.2d 378 (1942), *cert. denied*, 317 U.S. 698 (1943); *Patrick v. Riley*, 209 Cal. 350, 287 Pac. 455 (1930).

court to impose its own social philosophy as a matter of constitutional law.<sup>4</sup> Furthermore, history lends strong support to the contention that it is reasonable to place liability on relatives. While nonstatutory liability has been limited to husbands and to parents of minor children, most states have imposed statutory liability upon relatives of varying degrees of consanguinity.<sup>5</sup>

The opinion indicates that the incompetent's personal liability remains unaffected.<sup>6</sup> Since the individual is directly benefited by treatment of his illness, regardless of the reason for his confinement, it seems reasonable for the legislature to require him to defray the cost to the extent of his ability. The court did not explicitly pass on the validity of imposing liability on a husband or parent for the treatment of a wife or minor child.<sup>7</sup> It may be argued that the state merely furnishes care of a kind which under common law the parent or husband would have a duty to provide in the absence of the statute. But the assumption that support of the mentally ill is a public responsibility, if carried to its logical conclusion, might lead to the abrogation of even these responsibilities, since the benefit conferred on these relatives may often be little more than that conferred on the relatives designated by the present statute while the public benefit derived from the program remains constant.

4. It has been held that a legislative classification is a denial of equal protection only if the classification bears no substantial relation to the object to be accomplished. *Takahashi v. Fish & Game Comm'n*, 334 U.S. 410 (1948).

5. *E.g.*, Ill. Ann. Stat. ch. 91½, § 9-19 (Smith-Hurd Supp. 1963). Such statutes have uniformly been held constitutional. See, *e.g.*, *Kough v. Hoehler*, 413 Ill. 409, 109 N.E.2d 177 (1952).

6. See 36 Cal. Rep. at 490.

7. The court limited its holding to the liability of "one adult for the cost of supporting another adult." 36 Cal. Rep. at 489 (Emphasis added.)

The court's rationale renders suspect not only similar laws in other states<sup>8</sup> but all liability imposed in connection with welfare programs which may be classified by the courts as fulfilling a "public function." Commitment to a state sanatorium for treatment of a communicable disease, for example, seems to meet the court's test of being for the "protection of society" and the "reclamation" of the individual.<sup>9</sup> Consequently, in view of the overriding public interest in preventing the spread of such diseases, relatives probably would not be liable for treatment received in a state or county hospital. Under the *Kirchner* rationale, retention by the state of a general power to compel relatives to support the indigent also seems questionable. Though aid to the indigent is not primarily intended to protect the public against harm, it is recognized today that society has a duty to provide for such persons.<sup>10</sup> Imposition of liability upon relatives has been justified as preventing indigent persons from becoming public wards;<sup>11</sup> but if support of the indigent is defined as a public duty, then the burden may not be shifted to the relatives. Thus, unless qualified, the court's reasoning implies that the state may not impose liability upon relatives of persons aided by any state program simply because of the existence of such a relation-

8. Forty-two states presently have similar statutes. See Respondent's Petition for Rehearing, app. C.

9. 36 Cal. Rep. at 490. See, e.g., CONN. GEN. STAT. REV. §§ 17-294, -295 (1958), rendering relatives liable for care furnished patients at state tuberculosis facilities.

10. Such aid is normally required to be furnished by the county or city in which the indigent resides. See, e.g., CAL. WELFARE & INST'NS CODE § 2500.

11. See, e.g., *Broderick v. Broderick*, 7 Conn. Supp. 60 (Super. Ct. 1939).



ship,<sup>12</sup> with the result that all such programs would have to be financed entirely from general sources of taxation.

Since the court apparently recognized that the legislature may reasonably impose liability on the person confined, on the ground that he is a direct beneficiary of the treatment, its holding that imposition of liability on relatives is arbitrary may reflect a feeling that the benefit to the relatives is insufficiently manifest to justify their selection. If such a "benefit" test is accepted as determinative of what constitutes a reasonable class, the court's conclusion may be correct, even though the legislature limited the classification to "the husband, wife, father, mother, or children of a mentally ill person . . ."<sup>13</sup> Yet the code provisions envisage commitments which in fact may be principally for the benefit of the individual and his family,<sup>14</sup> and if the test is one of the degree by which public benefit exceeds private benefit, it might be possible to justify imposing liability on relatives in all but a restricted number of cases. Since the code provides no means for distinguishing between commitment of the dangerously ill, where the degree of public benefit clearly outweighs the private benefit from the commitment solely for treatment, where the public benefit is likely to be minimal, the court necessarily spoke in terms of the entire program. However, if the court's decision was based on comparative benefits, rather than total lack of benefit to the relatives, it would now be open to the legislature to redraft the statute in order to differentiate between the different types of commitment, specifying the persons deemed to benefit from each.

12. Affected programs in California would apparently include those providing aid to the aged and the needy blind. See CAL. WELFARE & INST'NS CODE §§ 2224, 3088.

13. *Cal. Welfare & Inst'ns Code* § 6650.

14. See *Cal. Welfare & Inst'ns Code* §§ 5040, 5050.8, 5076, 5100, 5102, 6602.

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In The  
**Supreme Court of the United States**  
October Term, 1964

No. [REDACTED] 111

DEPARTMENT OF MENTAL HYGIENE OF THE  
STATE OF CALIFORNIA, PETITIONER,

V.

EVELYN KIRCHNER, Administratrix of the Estate  
of ELLINOR GREEN VANCE, RESPONDENT.

(Petition for Writ of Certiorari to the Supreme Court  
of the State of California)

**AMICUS CURIAE BRIEF OF THE STATE OF NE-  
BRASKA IN SUPPORT OF THE PETITION FOR  
WRIT OF CERTIORARI TO THE SUPREME COURT  
OF THE STATE OF CALIFORNIA. FILED BY THE  
STATE OF CALIFORNIA.**

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MEL KAMMERLOHR,  
Assistant Attorney General  
*Attorneys for the State of Nebraska,  
Amicus Curiae.*

**In The  
Supreme Court of the United States**

**October Term, 1964**

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**No. 1141**

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**DEPARTMENT OF MENTAL HYGIENE OF THE  
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STATE OF CALIFORNIA.**

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The presently standing opinion of the Supreme Court of the State of California reported in 60 AC 704, 388 P. (2d) 720, 36 Cal. Rptr. 488 (1964), seriously places in question the validity of pertinent statutes of the State of Nebraska which are similar in language but identical in principle to the California statute considered by the Supreme Court of the State of California. The validity of the Nebraska laws is put in doubt as a

result of the opinion and decision of the Supreme Court of the State of California which so broadly applies the Equal Protection Clause of the Constitution of the United States so as to bring within its prohibition the classification of persons responsible for the care and maintenance of patients in state institutions under the California statutes and likewise those of the State of Nebraska.

The applicable Nebraska statutes are found in Chapter 83, Article 3, Nebr. Rev. Stats. Supp. 1963, to wit:

83-352. "If any patient in a state hospital for the mentally ill, or the spouse, child, or parent of such patient, is possessed of an estate and income sufficient to meet the expense of the patient's care and maintenance in the hospital without depriving those dependent upon such patient or relative of their necessary support, the guardian, spouse, child, or parent of such patient shall pay to the superintendent of the hospital, quarterly during the time the patient is in the Norfolk State Hospital, the Hastings State Hospital, or the Lincoln State Hospital, a sum to be fixed by the Department of Public Institutions which shall be an amount equal to the average per capita cost of maintaining the patients in the Norfolk State Hospital, Hastings State Hospital, and Lincoln State Hospital; and quarterly during the time the patient is in the Nebraska Psychiatric Institute, a sum to be fixed by the department which shall be an amount equal to the average per capita cost of maintaining the patients in the Norfolk State Hospital, the Hastings State Hospital, the Lincoln State Hospital, and the Nebraska Psychiatric Institute. Such costs shall be the same costs charged to counties for keeping such patients. If any patient is being maintained, as provided in section 83-829 or 83-329.02, and the patient or the spouse, child, or parent of such patient, is possessed of an estate or

income sufficient to meet the expense of the patient's care and maintenance without depriving those dependent upon such patient or relative of their necessary support, the guardian, spouse, child, or parent of such patient shall pay to the county a sum equal to the cost of maintaining the patient, as provided in section 83-329 or sections 83-329.02 to 83-329.04, but in no case more than four dollars per day. In actions brought under this section, the burden shall be on defendant to allege and prove that he is not possessed of an estate or income sufficient to meet the expense of the patient's care and maintenance without depriving those dependent upon him of their necessary support. The amounts to be paid under this section shall constitute a claim against the estate of the patient and be collectible therefrom; *Provided*, that amounts so paid by the county shall be considered a continuing open account and in actions brought within the time set forth in section 25-206 recovery may be had for the entire amount paid by the county. The Auditor of Public Accounts shall certify quarterly to the county clerk of each county the amount of the per capita cost and the names of all patients admitted to a state hospital from such county upon behalf of whom payments have not been made by any relatives. It shall be the duty of the county board of each county to investigate all unpaid claims and cause action to be brought in the name of the county by the county attorney to recover thereon, where it is probable that some recovery can be made."

It thus appears that the thrust of the opinion and decision of the Supreme Court of the State of California seriously impugns the substantially similar statutes of the State of Nebraska. The Attorney General of the State of Nebraska is deeply concerned about the grave issues raised in this case and presented in the instant petition for certiorari filed in this court.

The State of Nebraska, by Clarence A. H. Meyer, Attorney General of the State of Nebraska, hereby adopts and joins in the position, reasons advanced for the granting of the petition for certiorari and argument of the State of California in the above entitled matter, as contained in the petition for certiorari filed in this court.

Respectfully submitted,

CLARENCE A. H. MEYER,  
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MEL KAMMERLOHR,  
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In The  
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**AMICUS CURIAE BRIEF OF THE STATE OF  
NORTH DAKOTA IN SUPPORT OF THE  
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THE SUPREME COURT OF THE STATE OF  
CALIFORNIA, FILED BY THE STATE OF  
CALIFORNIA.**

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**In The  
Supreme Court of the United States**

**October Term, 1963**

**No. 1141**

**DEPARTMENT OF MENTAL HYGIENE OF THE  
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**AMICUS CURIAE BRIEF OF THE STATE OF  
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PETITION FOR WRIT OF CERTIORARI TO  
THE SUPREME COURT OF THE STATE OF  
CALIFORNIA, FILED BY THE STATE OF  
CALIFORNIA.**

The Attorney General of the State of North Dakota, as Amicus Curiae, respectfully supports the Petition of the State of California, praying that a Writ of Certiorari issue to review the judgment of the Supreme Court of California entered January 30, 1964, rehearing denied February 26, 1964.

**INTEREST OF THE STATE OF NORTH DAKOTA**

The State of North Dakota respectfully submits this brief for the purpose of acquainting this Honorable Court with the substantial interest of this State in a prompt and final judicial determination of the constitutional issues raised in the case.

The presently standing opinion of the Supreme Court of the State of California reported in 60 AC 704, 388 P. (2d) 720, 36 Cal. Rptr. 488 (1964), seriously places in question the validity of pertinent statutes of the State of North Dakota which are similar in language but identical in scope and principle to the California statute considered by the Supreme Court of that State. The validity of the North Dakota laws is put in doubt as a result of the opinion and decision of the Supreme Court of the State of California which so broadly applies the Equal Protection Clause of the Constitution of the United States so as to bring within its prohibition the classification of persons responsible for the care and maintenance of patients in state institutions under the California statutes and likewise those of the State of North Dakota.

The applicable North Dakota statutes are found in Chapter 25-09 of the North Dakota Century Code, 1963 Pocket Supplement, specifically at Section 25-09-02 thereof which provides as follows:

"25-09-02. Expenses chargeable against patient or his estate—Filing claims—Duties of county judge.—Except as provided in section 25-09-11, expenses for care and treatment of each patient at the state hospital or state school shall be the actual average per patient cost incurred by the state at each such institution. The board of administration shall recover quarterly from the patient if possible, or from the person who has been a patient in such institution, after he has been discharged from the institution, expenses for care and treatment. If any patient is receiving social security or is a veteran who has received, who is receiving, or who is entitled to receive compensation or pension from the veterans administration, such expenses shall be a current claim against such patient and may be recovered monthly by the board of administration except that the amount of seven dollars and fifty cents shall be credited

to the patient's personal account from any social security money received. Claims for expenses incurred by the state for care and treatment of a patient at the state hospital or state school may be filed against the estate of such patient after his death, at any time prior to final distribution thereof, by the board of administration in the same manner and with the same effect as claims of general creditors are filed against estates of decedents. Every county judge shall forward to the board of administration a list of the names of all persons whose estates have been entered for probate or heirship proceedings in his respective county court together with the legatees, devisees, and heirs at law of such estates within thirty days after the filing of the original certificate of any probate or heirship proceedings. The board of administration shall provide all county judges with forms for the purpose of carrying out the provisions of this section.

SOURCE: S. L. 1961, ch. 211, § 1; 1963, ch. 222, § 1."

Further, Section 25-09-04 of the above supplement to the N.D.C.C., defines "responsible relatives" as follows:

"25-09-04. Responsible relatives shall pay for care and treatment—Definition.—In the event of the patients' inability to pay for the costs of care and treatment, responsible relatives of such patients at the state hospital or state school shall pay to the board of administration quarterly, such costs as the board may determine reasonable for the care and treatment of patients at each institution. For purposes of this chapter and title 25 of this code "responsible relatives" shall mean the patient's spouse, father, mother or children.

SOURCE: S. L. 1961, ch. 211, § 1; 1963, ch. 222, § 3."

In North Dakota, collections for the past Biennium, based on the aforesaid statutes, totaled over Two and One Half Million Dollars. Further, and as a direct result of the California decision, we are presently being challenged both

— 4 —

administratively and through legal process at all levels of our legal jurisdictions, with the exception of our North Dakota Supreme Court, all challenges being based on the Kirschner decision, thus causing grave uncertainty as to our own statutes and enforcement procedures.

It thus appears that the thrust of the opinion and decision of the Supreme Court of the State of California seriously impugns the substantially similar statutes of the State of North Dakota. The Attorney General of the State of North Dakota is deeply concerned about the grave issues raised in this case and presented in the instant petition for certiorari filed in this court.

The State of North Dakota, by Helgi Johanneson, Attorney General of the State of North Dakota, hereby adopts and joins in the position, reasons advanced for the granting of the petition for certiorari and argument of the State of California in the above entitled matter, as contained in the petition for certiorari filed in this court.

### CONCLUSION

The petition for writ of certiorari should be granted.

Dated September 24, 1964.

Respectfully submitted,

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# In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 111

DEPARTMENT OF MENTAL HYGIENE OF THE  
STATE OF CALIFORNIA,

*Petitioner,*

VS.

EVELYN KIRCHNER, Administratrix of the  
Estate of ELLINOR GREEN VANCE,

*Respondent.*

## Brief for the Petitioner

On Writ of Certiorari to the Supreme Court  
of the State of California

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# In the Supreme Court of the United States

OCTOBER TERM, 1964

**No. 111**

DEPARTMENT OF MENTAL HYGIENE OF THE  
STATE OF CALIFORNIA,

*Petitioner,*

VS. :

EVELYN KIRCHNER, Administratrix of the  
Estate of ELLINOR GREEN VANCE,

*Respondent.*

## **Brief for the Petitioner**

On Writ of Certiorari to the Supreme Court  
of the State of California

### **OPINIONS BELOW**

The opinion of the Supreme Court of the State of California (R. 52-59) is reported at 60 Cal. 2d 716; 388 P.2d 720 (1964). The previous decision of the District Court of Appeal (R. 26-35) is reported in 29 Cal. Rptr. 312 (1963).

### **JURISDICTION**

The judgment of the Supreme Court of the State of California was entered January 30, 1964 (R. 52). A petition for Rehearing was filed on February 14, 1964 (R. 59-106) and was denied on February 26, 1964 (R. 114) without opinion. Petition for a writ of certiorari was filed on May 21, 1964 and was granted October 12, 1964. The jurisdiction of this

Court rests on 28 U.S.C. 1257(3) since the validity of a state statute has been drawn into question on grounds of repugnancy to the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

### QUESTIONS PRESENTED

1. Is a statute requiring the husband, wife, father, mother or children of a patient in a state mental hospital to pay for the cost of treating said patient, within reasonable standards of financial ability, so purely arbitrary and devoid of rational basis as to violate the Equal Protection Clause of the United States Constitution?

2. When a state supreme court decides a case on an important constitutional ground, neither raised at trial, or on appeal, nor briefed or argued by either party, has the losing party been denied due process of law within the meaning of *Saunders v. Shaw*, 244 U.S. 317 (1917)?

### STATUTES INVOLVED

The primary statute concerned in this case is California Welfare and Institutions Code section 6650, which provides, in part,<sup>1</sup>

"The husband, wife, father, mother or children of a mentally ill person or inebriate, and the administrators of their estates, and the estate of such mentally ill person or inebriate, shall be liable for his care, support and maintenance in a state institution of which he is an inmate."

1. The full text of Welfare & Institutions Code § 6650, § 6651 (qualifying § 6650 liability by ability to pay), § 6653 (requiring investigation of financial condition of patient and relatives), § 6655, Civil Code § 1432 (right to contribution), and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, all of which are here involved, are printed in full in Appendix A.

### STATEMENT OF THE CASE

Auguste Schaeche has been a patient at a California State Mental Hospital since January 15, 1953. The Department of Mental Hygiene of that State brought this action against the estate of Ellinor Green Vance, a deceased adult daughter of Auguste Schaeche. The purpose of the suit was to obtain reimbursement in the sum of \$7,554.22 for the care provided to Mrs. Schaeche for the four years preceding her daughter's death, on August 25, 1960 (R. 1-3).

Evelyn Kirchner is the duly appointed administratrix of the estate of Ellinor Vance (R. 2-3), as well as its principal beneficiary. She is also the guardian of the estate of Mrs. Schaeche, the incompetent (R. 15). Acting as administratrix of the daughter's estate, Evelyn Kirchner rejected the creditor's claim filed by the Department of Mental Hygiene (R. 3), but, as Mrs. Schaeche's guardian, offered to pay the claim out of the assets of the incompetent (R. 9-10). These assets, \$10,903.35, now held in escrow, were derived from the sale of the patient's realty. At the time of Mrs. Kirchner's offer to pay from these assets they were subject to an equitable lien in favor of the Department of Mental Hygiene in the sum of \$6,425.00 for accrued charges for care of Mrs. Schaeche for the period ending September 30, 1958, and for other sums that had become due after September 30, 1958 and would become due in the future (R. 9). The latter sums then owing together with the original sum of \$6,425.00 exceed the assets of the guardianship estate (R. 17).<sup>2</sup> Hence the Department of Mental Hygiene did not agree to accept payment from the respondent guardian,

2. There is an overlap of about two years in the claim against the estate of the deceased daughter and the period of the ascertained amount of the equitable lien against the patient's assets, i.e., August 25, 1956, to September 30, 1958. A substantial portion of the \$6,425.00 is for a period prior to August 25, 1956, for which suit would otherwise be barred by the statute of limitations. (Code Civ. Proc. § 345) There is also due from the guardianship estate costs of care for the period after August 24, 1960.

since to do so would impoverish the patient. Action therefore was filed against the respondent as administratrix of the Estate of Ellinor Green Vance, a responsible relative as defined by Welfare & Institutions Code section 6650 (R. 1-4).

By demurrer and then answer, the respondent asserted that the estate of the deceased daughter had no liability until the patient's own assets were totally exhausted (R. 4, 9). Nevertheless, no attempt was made to bring in the incompetent's estate as a party defendant. With the dispute thus limited to the single issue of priority both parties moved for judgment on the pleadings (R. 19, 20). The Department of Mental Hygiene's motion was granted and respondent's was denied (R. 23). On appeal, the District Court of Appeal affirmed (R. 26-35), but the Supreme Court of California reversed (R. 52-59).

### **SUMMARY OF ARGUMENT**

In this case the California Supreme Court held a state statute unconstitutional on the ground it violated the Equal Protection Clause. The statute imposed an obligation on close family members to contribute within their means toward costs of care for patients in state mental hospitals. Petitioner urges that the Constitution of the United States does not demand that a state bear the full cost of supporting the mentally ill in its hospitals.

The court's holding that for this purpose the classification is without rational basis disregards the long history of this obligation. These parental and filial duties, enforced in the civil law countries since early Roman times, have been part of the common law since 1601. Some forty-two states and the District of Columbia have statutes similar to that of California. Those courts which have considered the question have found the classification herein to be reasonable for

civil commitments, e.g. *Beach v. District of Columbia*, 320 F.2d 790 (1963), *certiorari denied* 375 U.S. 943. An obligation so firmly implanted in Anglo-American jurisprudence cannot be said to be purely arbitrary.

The court's own language compels the conclusion that it has undertaken to decide the wisdom of legislation rather than its constitutional validity. The decision itself relies on discredited authority and inappropriate analogies.

The court's holding is based on its mistaken notion that the public is the primary beneficiary because those confined are, like criminals, a danger to society as a whole, a point of view long since discarded.

The statute has for its purpose a proper government objective: to defray in part the cost of the state's mental health program. Selection of the class here is reasonable since the close family members derive a greater benefit from the state program than does the public as a whole.<sup>3</sup>

## I.

**FOR THE PURPOSE OF PARTIALLY RELIEVING THE STATE OF THE BURDEN OF CARING FOR THE MENTALLY ILL, A STATUTE IMPOSING LIABILITY UPON A CLASS LIMITED TO CLOSE FAMILY MEMBERS IS NOT ARBITRARY AND THUS IS NOT A DENIAL OF "EQUAL PROTECTION OF THE LAWS."**

**A. The Imposition of This Liability on Patients and Close Relatives Has a Legitimate Purpose: That of Partially Relieving the State of the Cost of Caring for the Mentally Ill.**

California Welfare & Institutions Code section 6650 (section references will be to this Code unless otherwise in-

3. The decision below has aroused uniformly critical comment by the law reviews. See 77 Harv. L. Rev. 1523 (1964), 49 Cornell L.Q. 516 (1964), 16 Hastings L.J. 129 (1964), 39 Notre Dame Law. No. 5 (1964), 40 Nor. Dak. 202 (1964), 39 N.Y.U. L. Rev. 858 (1964). This last Comment is printed in full as Appendix B.



dictated) imposes a joint and several liability on the patient's estate, husband, wife, father, mother or children and upon the administrators of their estates for the cost of care, support and maintenance in a state institution. Some forty-two other states and the District of Columbia have similar statutes (R. 91-92). Their purpose is clear. In *Dept. of Mental Hygiene v. McGilvery*, 50 Cal. 2d 742, 755; 329 P.2d 689 (1958), the California Supreme Court recognized that:

"The obvious purpose of the particular provisions of the statute here involved [§ 6650] is to minimize the cost to the state and its agencies in providing assistance to the needy and distressed by exacting contributions from persons standing in close relationship to those assisted."<sup>4</sup>

See also *Estate of Setzer*, 192 Cal. App. 2d 634, 637; 13 Cal. Rptr. 683 (1961).

The Legislature never intended to provide care and maintenance without charge to persons having assets of their own, or having close relatives with resources. *Estate of Lackmann*, 156 Cal. App. 2d 674, 676-677; 320 P.2d 186, 188-189, (1956); *Dept. of Mental Hygiene v. McGilvery*, 50 Cal. 2d 742, 755; 329 P.2d 689, 695 (1958); See also *Bertch v. Social Welfare Dept.* 45 Cal. 2d 524, 530; 289 P.2d 485, 489 (1955).

The court below now has declared the legislative purpose improper under the Federal Constitution. It has decreed that the state is obligated under the Constitution of the United States to bear the full cost of support for the mentally ill except where it may recover from the patient's estate. Heretofore the matter of extending, expanding, cur-

4. That it accomplishes this purpose is manifest from the estimate of the Department of Mental Hygiene that collections from the relatives total over five and one-half million dollars annually (R. 97).

tailoring or withdrawing public assistance and apportioning the burden thereof has been recognized as one of public policy only, as one for the legislature rather than the courts.

The California Supreme Court so held in *Estate of Yturburru*, 134 Cal. 567, 568-569; 66 Pac. 729 (1901):

"(T)hese institutions for the insane are charitable only so far as the legislature makes them so. There is nothing in the Constitution inhibiting laws extending charity to people in need of it, but it is not necessary to extend charity to those who are able to support themselves; indeed, it would be unreasonable to do so."

As recently as 1958 the same court said in similar vein,

"In this humanitarian age the state has assumed that obligation [support in mental hospitals] in the absence of the parent's ability to do so. This fact has not, however, entirely abolished the parental obligation. It has done so only to the extent provided by statute." *Dept. of Mental Hygiene v. McGilvery*, 50 Cal. 2d 742, 753; 329 P.2d 689, 694 (1958).

Courts of other states with statutes similar to that of California have approved and found legitimate the legislative purpose implicit in these statutes. E.g., *Kough v. Hochler*, 413 Ill. 409, 419; 109 N.E. 2d 177, 182 (1952); *In re Idleman's Commitment*, 146 Ore. 13, 22; 27 P.2d 305, 308-309 (1933); *Kaiser v. State*, 80 Kan. 364, 371; 102 Pac. 454, 457 (1909); *Acting Commissioner of Mental Hygiene v. Williamson*, 330 Mass. 52, 54-55; 110 N.E. 2d 916, 917 (1953); *People v. Hill*, 163 Ill. 186, 189-190, 46 N.E. 796, 798 (1896).

It is clear from statements in its opinion that the court below disapproved of the purpose and in invalidating the statute took upon itself the task of deciding the wisdom of the legislation. The court said:

"We need not blind ourselves to the social evolution which has been developing during the past half century; it has brought expanded recognition of the *parens patriae* principle . . . and other social responsibilities, including . . . divers other public welfare programs to which all citizens are contributing through presumptively duly apportioned taxes . . . From all of this it appears that former concepts which have been suggested to uphold the imposition of support liability upon a person selected by an administrative agent from classes of relatives designated by the Legislature may well be re-examined." (R. 57-58)

Certainly the extent of development of the "social evolution," the scope of the "*parens patriae* principle" and "other social responsibilities" are matters not dictated by the Constitution but are properly left to legislative judgment. The view of this Court today was early expressed by Mr. Justice Holmes in a famous dissent:

"[A] constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the State or of *laissez faire*." *Lochner v. N.Y.*, 198 U.S. 45, 75 (1905).

Petitioner recognizes that an "expanded recognition of the *parens patriae* principle" may have convinced many forward-looking and intelligent people that the state should provide to all citizens medical treatment for both physical and mental ills. Equally intelligent people hold opposite opinions. But the Federal Constitution does not require free hospitalization for mental or other illnesses any more than it "enacts[s] Herbert Spencer's Social Statics."<sup>5</sup> The Federal Constitution leaves enough room for this to be a debatable question. And,

5. *Lochner v. New York*, 198 U.S. 45, 75 (1905) Mr. Justice Holmes dissenting.

"if our recent cases mean anything, they leave debatable issues as respects business, economic, and social affairs to legislative decision. We could strike down this law only if we returned to the philosophy of the *Lochner*, *Coppage* and *Adkins* cases." *Day-Brite Lighting, Inc. v. Missouri*, 342 U.S. 421, 425 (1952).

Clearly, the court below no longer believes this liability to be a debatable issue under the Federal Constitution.

**B. The Statutory Imposition of Liability for Support on Close Relatives Able to Pay for State Hospital Care Is One Based on a Reasonable Classification.**

**1. The Reciprocal Duty of Support Between Close Family Members Was Well Established at Common Law and Was Derived from Universal Standards of Morality.**

Statutes requiring immediate family members to share, if financially able, in the cost of treating patients in state mental hospitals is based upon a classification heretofore deemed reasonable throughout Anglo-American jurisprudence. The legislatures of some forty-two states have enacted support laws similar in language but identical in principle to that of California (R. 91-92). Is such classification so devoid of reasonable basis as to be "purely arbitrary"<sup>6</sup> or "beyond rational doubt erroneous"?<sup>7</sup>

The concept that the immediate family members have a moral and legal duty to support their indigent or insane relatives was an early part of the development of the common law.<sup>8</sup> In 1601 Parliament enacted the Statute of Eliza-

6. *Lindsley v. National Carbonic Gas Co.*, 220 U.S. 61, 78 (1911).

7. *Dribin v. Superior Court*, 37 Cal. 2d 345, 351; 231 P.2d 809, 813 (1951).

8. In footnote 4 of the California Court's opinion it is mistakenly asserted to the contrary. The cases cited neither analyze nor trace the history of the proposition (R. 53-54).

beth<sup>9</sup> which imposed upon relatives of close consanguinity an obligation to support both indigent and "impotent" or insane family members.

The King's Bench explained the need for this statute in *Rex v. Munden*, 1 Str. 190, 93 Eng. Rep. 465 (K.B. 1719).

"By the law of nature a man was bound to take care of his own father and mother; but there being no temporal obligation [under the early common law] to enforce that law of nature, it was found necessary to establish it by Act of Parliament . . . ."

In the United States, those decisions which undertook to trace the development of the liability heré concerned, found that the doctrine has been firmly implanted in Anglo-American Jurisprudence for 360 years, since the Statute of Elizabeth of 1601. This early Act of Parliament and the subsequent interpretative decisions make the obligation part of our common law.<sup>10</sup>

9. 43 Elizabeth, ch. 2, § 7 states:

"And be it further enacted, that the father and grandfather, and the mother and grandmother, and the children of every poor, old, blind, lame and impotent person, or other poor person not able to work, being of a sufficient ability, shall, at their own charges, relieve and maintain every such poor person in that manner, and according to that rate, as by the justices of peace of that county where such sufficient persons dwell, or the greater number of them, at their general quarter-sessions shall be affected; (2) upon pain that every one of them shall forfeit twenty shillings for every month which they shall fail therein."

10. The common law "includes not only the *lex non scripta*, but also the written statutes enacted by Parliament." *People v. One 1911 Chevrolet Coupe*, 37 Cal. 2d 283, 287; 231 P.2d 832, 835 (1951). More precisely, it includes those Acts passed by Parliament prior to the separation of the American Colonies from England. *Moore v. Purse Seine Net*, 18 Cal. 2d 835, 839; 118 P.2d 1, 3 (1941).

The above principle has long been followed by this court and the U.S. Circuit Courts, *Doe ex dem. Patterson v. Winn*, 5 Pet. 233, 241 (1831); *Manoukian v. Tomasian*, 237 F.2d 211, 215 (D.C. Cir. 1956), and is the majority rule. See cases cited in 78 U. of Pa. L. Rev. 195 (1929); 11 Am. Jur., *Common Law*, § 12 (1938).

In *People v. Hill*, 163 Ill. 186, 187; 46 N.E. 796, 797-8 (1896) it was observed that the duty of supporting close family members, even when insane, was a principle of natural law and one which had always been enforced by the courts of the civil law countries. The court noted that the Statute of Elizabeth was passed to correct the previous "defect" in the English law and to transform "the imperfect moral duty into a statutory and legal liability." See *Beach v. Government of the District of Columbia*, 320 F.2d 790, 792, (1963), *certiorari denied*, 375 U.S. 943 (1963), relying on the same history and principles to sustain the reasonableness and constitutionality of a similar District of Columbia statute.

This obligation was rigidly enforced by the Roman Law<sup>11</sup> and by civil law countries.<sup>12</sup> The Old Testament makes clear a duty to one's parents.<sup>13</sup> The admonition of the Fifth Commandment to "honor thy father and thy mother"<sup>14</sup> includes the duty of support.<sup>15</sup>

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11. See 12 *The Civil Law* (S.P. Scott Transl.) 62, the Code of Justinian, Book I, Extract of Novel 115, Chapter III. If a son refused to support his insane father, or vice versa, all right of inheritance was lost, even a bequest by will. The inheritance went to the one who provided the support.

12. 1 Blackstone, Commentaries, ch. \*16; \*447, \*453 (Cooley's 4th ed. 1899).

13. *Exodus* 20:12; *Leviticus* 19:3; *Deuteronomy* 5:16; *Proverbs* 1:8-9, 23:22.

14. *Exodus* 20:12.

15. Code of Jewish Law (Kitzur Shulban Aruh) \*c. 143 § 1. (On honoring father and mother). "What constitutes 'honor'? One must provide them with food and drink and clothing. One should bring them home and take them out, and provide them with all their needs cheerfully."



Our greatest philosophers, such as Plato,<sup>16</sup> Aristotle<sup>17</sup> and John Locke<sup>18</sup> have honored and emphasized obligations based on family relationships.

These authorities demonstrate that the particular obligation here involved cannot be condemned as an "invidious discrimination"<sup>19</sup> merely because it is based on a family relationship.

In summary, the support liability here is not one of recent contrivance. It has a long and venerable history in Western civilization and Anglo-American jurisprudence. Mr. Justice Holmes once stated that a classification does not violate the equal protection clause "unless it can be said that a rational and fair man necessarily would admit that the statute proposed would infringe fundamental principles as they have been understood by the traditions of our people and our law."<sup>20</sup> Certainly when an obligation can be shown to be part and parcel of those traditions, it can hardly be said to infringe its principles. "The Fourteenth Amendment did not tear history up by the roots . . ." *Goesaert v. Cleary*, 335 U.S. 464, 465 (1948) and the unanimous approval of this ancient liability<sup>21</sup> throughout Western civilization completely repudiates the suggestion that it is "purely arbitrary."

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16. IV Plato, *Laws* •717, ("Next comes the honour of living parents to whom, as is meet, we have to pay the first and greatest and oldest of all debts . . .")

17. See generally, VIII Aristotle, *Nicomachean Ethics* •c. 12.

18. Locke, *Concerning Civil Government, Second Essay* •66 discussing the natural obligations between parents and children.

19. *McGowan v. Maryland*, 366 U.S. 420, 426 (1961), quoting with approval at note 3, *Williamson v. Lee Optical*, 348 U.S. 483, 489 (1955).

20. *Lochner v. N.Y.*, 198 U.S. 45, 76 (dissent) (1905).

21. Justice Cardozo's admonition seems particularly appropriate. "Not lightly vacated is the verdict of quiescent years." *Coler v. Corn Exchange Bank*, 250 N.Y. 136, 164 N.E. 882, 884 (1928).

## 2. All Previous Decisions Have Upheld the Constitutionality of the Instant Liability.

The obligation here in question is not one that has been left unexamined by the judiciary. Although this Court has never considered the precise question now, at bench, every state and federal court which has previously considered it has found the classification herein to be reasonable in respect to civil commitments.

The most recent decision is *Beach v. District of Columbia*, 320 F.2d 790 (1963), *certiorari denied*, 375 U.S. 943 (1963). The statute there involved, section 21-318 of the District of Columbia Code, is virtually identical to California's Welfare and Institutions Code section 6650. The District obtained a judgment against a father of an adult daughter for a portion of the cost of treating her in Saint Elizabeth's Hospital. On appeal the judgment was affirmed by the Court of Appeals for the District of Columbia. The court delineated the reasons why the imposition of such liability cannot be deemed arbitrary or unreasonable:

"[W]hen the law turns also to the father for help, if he is able to give it, when the estate of the incompetent is insufficient, it does so only to supplement the public responsibility. Placing a secondary obligation upon the father finds its validity in the reasonableness of attaching legal significance to the natural bonds of consanguinity. It is not unreasonable, it is not a denial of due process, for the law to attach an enforceable obligation to the moral obligation which exists in the usual family relationship of father and daughter." 320 F.2d at 793.

The court's emphatic statement of the reasonableness of "attach[ing] an enforceable obligation to the moral obligation which exists in the usual family relationship" (*Ibid.*) makes the court's reasoning directly applicable to equal

protection cases<sup>22</sup> because it meets squarely and disposes of the contention that the classification is essentially arbitrary.

Without exception, support statutes involving classifications virtually identical to that here in issue have been sustained as being neither arbitrary nor unreasonable. E.g., *People v. Hill*, 163 Ill. 186, 46 N.E. 796 (1896); *State v. Bateman*, 110 Kan. 546, 204 P. 682 (1922); *In re Idleman's Commitment*, 146 Ore. 13, 27 P.2d 305 (1933); *Kough v. Hoehler*, 413 Ill. 409, 109 N.E. 2d 177 (1956); *State v. Webber*, 163 Ohio 598, 128 N.E. 2d 3 (1955); *Dept. of Public Welfare v. Haas*, 15 Ill. 2d 204, 154 N.E. 2d 265 (1958).

Typical of the attitude of the courts which have upheld these support statutes against constitutional attack is a California decision not mentioned in the opinion below.

"And, as to the proposition of the alleged unequal burden imposed upon one class, thus, as contended, discriminating in favor of another upon whom the burden is not cast, the answer is, we think, that the so-called unequal burden is only one springing from a natural duty which, as to its performance, the legislature has recognized by positive enactment. (Civ. Code, §§ 38, 206.)" *State Commission in Lunacy v. Eldridge*, 7 Cal. App. 298, 304, 94 Pac. 597, 599 (1908).

22. *Bolling v. Sharpe*, 347 U.S. 497 (1954), also a case from the District of Columbia, demonstrates the reasoning in *Beach* comes to bear upon the instant question. There, this Court pointed out (at 499) that while equal protection may be a more explicit safeguard than due process, and hence not always interchangeable with it, "the concepts of equal protection and due process, both stemming from our American ideal of fairness, are not mutually exclusive." (Emphasis added), *Detroit Bank v. United States*, 317 U.S. 329, 337-338 (1943); *Curran v. Wallace*, 306 U.S. 1, 13-14 (1938). The Court in *Bolling* then proceeded to strike down racial discrimination in the District of Columbia under the same basic rationale as it used the same day in *Brown v. Bd. of Education*, 347 U.S. 483 (1954) under the Equal Protection Clause.

Only six years ago the court below upheld this same liability against charges of denial of equal protection in an exhaustive and comprehensive opinion. *Dept. of Mental Hygiene v. McGilvry*, 50 Cal. 2d 742, 754; 329 P.2d 689, 694 (1958).

**3. Equal Protection Is Not Denied to the Wealthy Relatives Because of Their Ability to Pay.**

The court below implies that an additional denial of equal protection exists because collection of medical costs from relatives is contingent on ability to pay. (See §§ 6651-6653.) The court said,

"It is established in this state that the mere presence of wealth or lack thereof in an individual citizen cannot be the basis for valid class discrimination." (R. 57)

The authority cited by the court is *Dribin v. Superior Court*, 37 Cal. 2d 345, 348-350; 231 P.2d 809 (1951), where the need to prove financial responsibility resulted in a type of divorce available to the rich but denied to the poor.

Under such circumstances the claim of "unreasonable class discrimination" is appropriate and similar contentions have been frequently upheld by this Court. *Douglas v. California*, 372 U.S. 353 (1963) (right to free counsel on criminal appeal); *Draper v. Washington*, 372 U.S. 487 (1963); *Lane v. Brown*, 372 U.S. 477 (1963); and, *Griffin v. Illinois*, 351 U.S. 12 (1955) (right to free transcript on criminal appeal). In all of these cases the discrimination, deemed invidious, was against the indigent. Equal protection would be the issue here if those who pay received better treatment in proportion to what they pay and the poor were neglected. Payment has no bearing on the character of treatment and care. All get the treatment they require in equal amount whether they pay or not (R. 89). The ability-

to-pay standard results in liability for some, but not for others. This ability-to-pay concept is a familiar one. See any U.S. Internal Revenue Act since adoption of the graduated income tax!

Would this Court be prepared to say that having confirmed the constitutional right of the poor to counsel or transcript on appeal, it has created another invidious discrimination which allows the rich to complain that they are being unconstitutionally denied a free transcript or counsel because of "the mere presence of wealth"? (R. 57). We submit that no such absurd consequence was contemplated. On the contrary, in *Griffin, supra*, at p. 19, and *Douglas, supra*, at p. 355, this Court declared the evil to be discrimination against the indigent because the wealthy had the means to protect their rights by paying for counsel and transcripts.

The policy of the states, as expressed in statutes which require the patient and close relatives, if able, to reimburse the state for costs of maintaining mental institutions, has been judicially recognized. Heretofore, without exception, ability-to-pay has been held to be based on a reasonable distinction. *Acting Com'r of Mental Health v. Williamson*, 330 Mass. 52, 54; 110 N.E. 2d 916, 917-918 (1953); *Kough v. Hoehler*, 413 Ill. 409, 419; 109 N.E. 2d 177, 181-182 (1952); *De Jarnette v. Hospital Authority of Albany*, 195 Ga. 189; 23 S.E. 2d 716, 722 (1942); *Estate of Yturburru*, 134 Cal. 567, 66 P. 729 (1901); *State Commission in Lunacy v. Eldridge*, 7 Cal. App. 298; 94 P. 597 (1908); *Dept. of Mental Hygiene v. McGilvery*, 50 Cal. 2d 742; 329 P.2d 689 (1958).

**4. The Cases Cited in the Opinion Below Do Not Support the Decision That Family Relationship Is Not a Valid Basis for Classification.**

In attacking the classification based on "family relationship, the court below directly relied upon *Estate of Tetsu-*

*bumi Yano*, 188 Cal. 645, 206 Pac. 995 (1922) and *Hoeper v. Tax Commissioner*, 284 U.S. 206 (1931). In support of this premise the court also cited *Oyama v. California*, 332 U.S. 633 (1948) (R. 57). These cases are not authority for the conclusion that a classification based on family relationship is inherently discriminatory.

In *Estate of Yano*, a Japanese alien ineligible to own land under the California Alien Land Act sought guardianship over his American born minor child's property. The California Supreme Court held unconstitutional the statute which prohibited appointment of an alien, who could not himself own property, as guardian of his child's property. The court stated, "It [the statute] is clearly a discrimination against citizens of Japan residing in this State." 188 Cal. 645, 654, 206 P. 995, 999. The classification by nationality, not by family relationship, was declared unconstitutional. Similarly in *Oyama* this Court held unconstitutional on the ground of racial discrimination, not family relationship, that part of the California Alien Land Law which effected escheat to the state of lands held by a minor American citizen whose lands had been paid for by his parent, a Japanese citizen ineligible for naturalization.

In *Hoeper v. Tax Commission*, 284 U.S. 206 (1931), this Court invalidated a statute under which a state assessed an income tax against the husband measured by the sum of the income of both husband and wife. The California Court here referred to *Hoeper* as if controlling on the question of whether a family relationship is a permissible basis for classification<sup>23</sup> and then quoted from the case the truism

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23. This Court has always upheld, against charges of denial of equal protection, *preferential* inheritance tax treatment for close family members as against strangers or collateral heirs. *Campbell v. Calif.*, 200 U.S. 87, 94 (1905).



that a state is forbidden to deny equal protection of the law (R. 57). Mr. Justice Holmes' dissent<sup>24</sup> to *Hoeper*, concurred in by Justices Brandeis and Stone, is more compatible with current authorities.<sup>25</sup> Whatever that case means today, it cannot justify striking down this classification merely because it is based on family relationship.

The court below found "dispositive of the issue before us" (R. 55) its holding in *Dept. of Mental Hygiene v. Hawley*, 59 Cal.2d 247, 379 P.2d 22 (1963), in which the court had invalidated relative responsibility for the support and treatment of the criminally insane. The holding of *Hawley* is:

"The Fourteenth Amendment, 'in declaring that a State shall not 'deprive any person of life, liberty or property without due process of law,' gives to each of

24. "So far as the Constitution of the United States is concerned, the legislature has power to determine what the consequences of marriage shall be, and as it may provide that the husband shall or shall not have certain rights in his wife's property, and shall or shall not be liable for his wife's debts, it may enact that he shall be liable for taxes on an income that in every probability will make his life easier and help to pay his bills. . . . It is said that Wisconsin has taken away the former characteristics of the marriage state. But it has said in so many words that it keeps this one. And when the legislature clearly indicates that it means to accomplish a certain result within its power to accomplish, it is our business to supply any formula that the *eleganta juris* may seem to require." 284 U.S. at 220.

25. For example, see *Fernandez v. Wiener*, 326 U.S. 340 (1945) upholding a federal estate tax measured by the value of the entire community property at the time of the death of the husband. See especially Justice Douglas' concurring opinion questioning *Hoeper* (at 365). *Albanese D'Imperio v. Secretary of Treasury*, 223 F.2d 412, 415 (1st Cir. 1955), questions whether, in the light of later cases, "[*Hoeper*]" still speaks with authority." In addition, see *Ballester v. Descartes*, 181 F.2d 823, 829 (1st Cir. 1950), questioning if "*Hoeper v. Tax Commission* would be followed today even on its particular facts" in view of *Fernandez*. Cf. *Ballester-Ripoll v. Court of Tax Appeals*, 142 F.2d 11, 17 (1st Cir. 1944) *certiorari denied*, 323 U.S. 723 (1944), for a similar implication.

these an equal sanction; it recognizes "liberty" and "property" as co-existent human rights, and debars the States from any unwarranted interference with either.' (*Coppage v. Kansas* (1915) 236 U.S. 1, 17 \* \* \* "It has further been declared that 'Life, liberty, property, and the equal protection of the law, grouped together in the Constitution, are so related that the deprivation of any one of those separate and independent rights may lessen or extinguish the value of the other three.' (*Smith v. Texas* (1914) 233 U.S. 630.)" 59 Cal.2d at p. 256; 379 P.2d at p. 28.

A decision which finds "dispositive" a case whose sole constitutional authority is the repudiated doctrine of *Coppage v. Kansas*, 236 U.S. 1 (1915) (invalidating a statute outlawing "yellow dog" contracts) and *Smith v. Texas*,<sup>26</sup> 233 U.S. 630 (1914), is clearly infected with the infirmity of those cases. Any reliance today on *Coppage* is as misplaced as would be reliance upon the majority opinions in *Lochner v. New York*, 198 U.S. 45 (1905), or *Adkins v. Childrens Hospital*, 261 U.S. 525 (1923). Over twenty years ago this Court refused to follow *Coppage*, stating:

"The course of decisions [since *Adair* and *Coppage*] have completely sapped those cases of their authority." *Phelps Dodge v. Labor Bd.*, 313 U.S. 177, 187 (1941).

And only last term this Court said,

"The doctrine that prevailed in *Lochner*, *Coppage* and *Burns* and like cases—that due process [or equal protection] authorizes courts to hold laws unconstitu-

26. (Mr. Justice Holmes dissenting). Statutory qualifications for freight conductor were held to be unconstitutional, apparently because the court did not believe them necessary. This decision is severely undermined by recent decisions giving wide latitude to legislatures to regulate occupations, for example, *Ferguson v. Skrupa*, 372 U.S. 726 (1963) (debt adjusting by non-lawyers forbidden), *Williamson v. Lee Optical*, 348 U.S. 483 (1955) (forbidding opticians from duplicating lenses without a prescription).

tional when they believe the legislature has acted unwisely—has long since been discarded.” *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963).<sup>27</sup>

To recapitulate briefly, petitioner has demonstrated two facts: First, that a liability so familiar throughout western civilization, so frequently examined by state courts of last resort, enacted by an overwhelming majority of the legislatures of the several states, cannot be said to be “purely arbitrary”; nor can it be said to “infringe fundamental principles as they have been understood by the traditions of our people and our law.”<sup>28</sup> Second, it is obvious neither *Hooper*, *Hawley* (resting solely on *Coppage*, *Smith v. Texas*) nor any case dealing with race discrimination cited by the court below supports the holding that this classification based on filial and parental bonds is “without any reasonable basis.”

How then can this decision be explained? As previously pointed out, *supra* pp. 7-8, the court below has taken on itself the task of deciding the wisdom of the legislation.

**C. There is a Reasonable Relationship Between the Legislative Purpose and the Classification.**

Equal protection of the laws is not violated if there is a reasonable relationship between the legislative purpose and the class designated. The burden imposed on the class may be greater than that imposed on the public as a whole. *Power Mfg. Co. v. Saunders*, 274 U.S. 490, 493-494 (1926).

27. Equally positive condemnations of *Coppage* were made in *Day-Brite v. Missouri*, 342 U.S. 421, 423, 425 (1949) and *Lincoln Union v. Northwestern*, 335 U.S. 525, 535-536 (1949). See also *Williamson v. Lee Optical*, 348 U.S. 483, 488-489 (1955), *Daniel v. Family Ins. Co.*, 336 U.S. 220, 224 (1949).

28. *Lochner v. N.Y.*, 198 U.S. 45, 76 (Mr. Justice Holmes dissenting).

The purpose here is partially to relieve the state of the burden of caring for the mentally ill. The class upon whom the burden is imposed is identical with the class which has the common law or moral duty of support. It is the class which derives a greater benefit than the public as a whole. Thus the statutory classification is drawn along lines which are logically related to the purpose of the law. *Morey v. Doud*, 354 U.S. 457, 466 (1957).

The rational basis supporting such classifications has been clearly enunciated by every other state court which has had the specific question before it. Simply stated, it is that the relatives obtain more direct benefits than society as a whole. As one court observed,

"Those patients in the State hospital for the purpose of treatment alone [civil commitments] are of direct and vital interest only to their relatives and friends. It is true that the public has an indirect moral interest in their care and well being, but they are of direct consideration only to their close friends and relatives." *Kough v. Hoehler*, 413 Ill. 409, 417; 109 N.E. 2d 177, 181 (1956).

Language to the same effect was used by the courts in *Guthrie Co. v. Conrad*, 133 Iowa 171; 110 N.W. 454 (1907); *State v. Bateman*, 110 Kan. 546; 204 Pac. 682 (1922); *In re Idleman's Commitment*, 146 Ore. 13, 27 P.2d 305 (1933); *Atkins v. Curtis*, 259 Ala. 311, 66 So. 2d 455, 458 (1953); *People v. Hill*, 163 Ill. 186, 46 N.E. 796 (1891); *State Commission in Lunacy v. Eldridge*, 7 Cal. App. 298, 94 P. 597 (1908).

These cases also refute the California Court's contention that this is a "species of taxation" (R. 58).

This Court in examining statutes attacked on the ground of denial of equal protection has stated:

"A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it. See *Kotch v. Board of River Port Pilot Comm'rs*, 330 U.S. 552; *Metropolitan Casualty Ins. Co. v. Brownell*, 294 U.S. 580; *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61; *Atchison, T. & S. F. R. Co. v. Matthews*, 174 U.S. 96." *McGowan v. Md.*, 366 U.S. 420, 426 (1960).

Certainly there are other states of facts which may reasonably be conceived to justify relative liability for support for a mentally ill person in a state tax supported hospital.

The Legislature here might well have considered that relative responsibility would tend to avoid or minimize certain deleterious effects upon patients and society, and that the financial involvement might encourage other effects deemed therapeutic.<sup>29</sup>

Maintaining the family's close interest in a patient is an important ingredient of a speedy recovery.<sup>30</sup> The Legislature might well have believed that families who made a contribution within their means toward a patient's cost of treatment would be more likely to continue an interest in the

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29. This is the conclusion of the Council of State Governments, "Mental Health Programs of the Forty-Eight States" (1950), p. 8, "Much of the stigma surrounding hospitalization of the mentally ill might be averted if patients could feel that they were making a contribution toward the cost of their hospitalization, as in a general hospital for physical illness. Patients or their legally responsible relatives should contribute to the cost of hospital care and treatment in accordance with the financial ability..." (Emphasis added.)

30. Lidz, et al., *Patient-Family-Hospital Interrelationships in The Patient and the Mental Hospital* 535 (Greenblatt et al. eds. 1957; Preston, *The New Public Psychiatry*, 31 *Mental Hygiene* 177 (1947).

patient than a family freed of any responsibility for their family member.<sup>31</sup>

Most commitments to state hospitals are effected by close family members. But children with an aged parent generally have several choices as to how the parent can be best cared for. Entrance into a private home for the aged, or a nursing home, usually carries financial implications for the children able to pay. Consequently for economic reasons if the decision below stands, admissions to state hospitals will be sought by relatives for patients now being cared for adequately at home or in community located privately operated facilities. In addition,

"Admission to a state hospital might become preferable to local treatment programs. The economic advantage to the family might outweigh the accepted principles of sound psychiatric practice. For example, 24-hour hospitalization in a large facility miles from home might be preferred to day treatment in a community psychiatric facility close to the family and more in keeping with the patient's social and psychological needs, purely for economic reasons." (R. 100) . . . "(W)e anticipate

31. "The justification of the private support obligation reaches beyond the question of financial necessity. Enlightened application of the principle of private responsibility may constitute a potentially effective instrument in achieving the difficult goal of reshaping community attitudes toward the mentally ill. . . . Indeed, underlying the beliefs of those who advocate the abolition of private responsibility may well be a general charitable intent to attenuate the family's identification with its mentally ill member by interposing the impersonal agency of a benevolent government. When group responsibility is substituted for individual responsibility in this way, the likelihood of critical re-examination of individual attitudes considerably diminishes.

"Conversely, the operation of private responsibility programs necessarily requires that some individuals face squarely the problem of mental illness as it affects them. . . . This approach tends to undercut popular stigmatization of mental illness by viewing the care of mental patients as not very different from the treatment of, say, persons suffering from appendicitis." Mernitz, *Private Responsibility for the Costs of Care in Public Mental Institutions*, 36 Ind. L.J. 443 (1961).



a trend in the direction of increased admissions, increased readmissions and decreased releases because the economic advantages will outweigh the social and psychological responsibility." (R. 101)<sup>32</sup>

The tendency toward using state hospitals for a "dumping ground" for disturbed persons of the lower economic classes (for whom treatment and custody has always been free) has been noted by Hollingshead and Redlich who studied the relationship between socioeconomic classes and mental illness.<sup>33</sup>

Previously, the financial implications of committing a parent had some deterrent effect on a middle or upper class family's decision to commit a senile parent. The value of alternatives was considered. The court's decision, making the state hospitals free insofar as relatives are concerned may well prove to be an important barrier to the development of community resources for the outpatient treatment of patients with psychiatric disorders.

Consequently state mental institutions may again be so overcrowded that the present trend from custody to treatment necessarily will be reversed.<sup>34</sup>

The opinion below also voices a disturbing retrogression in its view of the legal basis for the commitment of the mentally ill. In support of its holding that there is no rational

32. Dr. E. F. Galioni, Dep. Dir., Hospital Clinical Services, Calif. Dept of Mental Hygiene.

33. Hollingshead and Redlich, *Social Class in Mental Illness*, pp. 330-31 (1958). The conclusions of this study are set out in Mernitz, *ibid.* 36 Ind. L.J. 443-473, n.101. They said, in part. "Ordinarily, these persons are not wanted by their families, and they are viewed as useless, obnoxious, and occasionally dangerous to society, if not to themselves. The sequel to rejection by the family and isolation from the community is long-range custodial care."

34. See Lindman and McIntyre: "The Mentally Disabled and the Law" p. 19 (1961).

basis for the imposition of the liability for support on close family members the court assumes that the confinement of a patient in a state mental hospital is "for their protection and the protection of others." (R. 57) No statute or legislative history is given to support this assumption.<sup>35</sup> The vice of the court's opinion is its equating the hospitalization of the mentally ill under civil commitment with confinement of those charged with or convicted of a crime. It is this notion which is the foundation for the court's conclusion that the maintenance of state mental hospitals is purely a public duty, one which cannot be shifted even in part, to the family of the patient.

The court apparently concludes that all the mentally ill must be confined much as criminals are confined, that both are a danger to society. This is made explicit by its finding that a case invalidating relative responsibility for the criminally insane<sup>36</sup>

"is dispositive of the issue before us. Whether the commitment is incidental to an alleged violation of a penal statute, as in *Hawley*, or in essentially a civil commitment as in the instant case, the purposes of confinement and treatment or care in either case [are the same]."<sup>37</sup> (R. 55)

35. The court's statement to this effect, attributed to *Dribin v. Superior Court*, 37 Cal. 2d 345, 352, 231 P.2d 809 (1951), is actually a quotation therein from 14 Cal. Jur. 341-342, § 6. This secondary authority was published in 1924. Concepts about mental illness have changed dramatically since then.

36. *Dept. of Mental Hygiene v. Hawley*, 59 Cal. 2d 247, 379 P.2d 22 (1963).

37. Reliance on *Hawley* is indeed surprising. Only last year the very distinction now casually swept aside was thought to make a constitutional difference when the Court said,

"... here ... the committed person is held in the state institution not merely because he is (or was) *insane* but because the state, in a proceeding instituted by it, has accused him of *crime* and *his detention is found to be necessary for the protection of the public.*" *Dept. of Mental Hygiene v. Hawley*, 59 Cal. 2d 247, 255 (1963) (Emphasis by the court.)

As one law review commentator observes, this analogy constitutes

"a view of psychiatric medicine which now seems anachronistic. No longer are the mentally ill locked up in houses of bedlam primarily to protect the rest of society from irksome interferences. . . ."<sup>38</sup>

Psychiatrists today deplore custody-oriented law such as expressed in the opinion below. A group of psychiatrists, who studied the commitment procedures across the country noted as their opening observation on outmoded commitment laws, that

"Historically the commitment in early statutes was limited to the dangerously insane. This has tended to perpetuate the stigma of criminality upon mental illness."<sup>39</sup>

Dr. Walter Rapaport, a noted psychiatrist and former Director of the California Department of Mental Hygiene, has explained (R. 86-91) the historical origin of this custodial or protection-of-society view of the function of mental institutions:

"Some considered the manifestations of the so-called insane person to be related to sinfulness, some to crim-

38. Comment, 39 N.Y.U. L. Rev. 858 (1964); see Appendix B.

39. Group for the Advancement of Psychiatry, Commitment Procedures (Report No. 4, April 1948):

For a scholarly and exhaustive treatment of mental hygiene laws across the country and suggested reforms, see Comment: Analysis of Legal and Medical Considerations in Commitment of the Mentally Ill, 56 Yale L.J. 1178 (1948). At pp. 1185-86, the author traces the history of "the Community Interest in Self-protection" or "dangerous to be at large" basis for commitment. "The present existence of this criterion in some commitment statutes manifests continued association of mental hospitals with dangerous insanity and tends to perpetuate the stigma of criminality attached to mental illness." The author urges "... legislative reform which will disassociate the process of admitting patients to mental hospitals from that of committing criminals to public jails." (at p. 1200.)

inality, and in some instances the insane person was pictured to be related to God or some other power for good or for evil. Thus it is easy to understand why there was a public demand that this type of person be isolated from society on the basis of the majority feeling that they were a danger and a menace." (Ibid.)

However, psychiatrists today view the concept that the mentally ill are by and large dangerous as little more than a layman's superstition. Dr. Rapaport states further,

"With the trend away from custody toward treatment, there has also developed the realization that by and large the mentally ill cannot be considered as dangerous to society. It has been established by scientific studies that people who have been in our hospitals . . . , commit less crimes of violence when compared to the general population than do those who have not been in our hospitals . . ." (R. 89)

Dr. Rapaport further indicates (Ibid.) that barred windows and locked doors are, but for a handful of patients and those at Atascadero (institution for the criminally insane), a thing of a past and unenlightened age.<sup>40</sup> He concludes with the observation that mental hospitals today must be considered not as custodial institutions but rather as centers for "treatment, training, education and research activities." (R. 90)

Mental patients are now being treated as human beings with a curable disease, not as persons posing a threat to society.

In one respect the court's premise here is identical to a claim made in *Kough v. Hochler*, 413 Ill. 409, 109 N.E.

40. As part of the record (R. 93) is a photograph of a hospital built when it was thought that state hospitals were primarily for the protection of society and the patient. It was an "insane asylum", not a hospital.

2d 177 (1952). It was there argued that there is no constitutional difference between liability of the family for the criminally insane and those committed pursuant to civil proceedings. In that case the court disposed of the contention by stating:

"We cannot agree with plaintiff's reasoning that there is no valid basis for making a distinction between persons who are in the hospital merely for treatment and those who are imprisoned on account of some criminal charge or offense and who, if they were in physical and mental health, would be in the jails or penitentiaries. We think there is a clear basis for distinction. Inmates against whom there are no criminal charges, or who have been guilty of no criminal offenses, are in the hospital solely for treatment. Those who are charged with crime, or who have been convicted of crime, would ordinarily be in the jail or penitentiary, but on account of the fact that there are no facilities there for treating them for their physical and mental ills they are transferred to the hospitals. Moreover, the public is vitally and directly interested in those who are in custody. They are in custody initially for the protection of the public, when convicted or accused of a crime. They do not cease to be of intimate consideration to the public merely because they are, or become, insane, nor do they cease to be in custody for the same reason." 413 Ill. 409, 416; 109 N.E. 2d 177, 181.

The California court is of course correct in stating that some benefit accrues to the public from the incarceration of that handful of actually dangerous persons<sup>41</sup> and from

41. See *State Comm. v. Eldridge*, 7 Cal. App. 298, 94 P. 597 (1908) in which the court acknowledges the public benefit from the detention of dangerous persons, but correctly states that the "principal purpose" is to treat the sick.

the "reclamation [of the person] as a productive member of society." (R. 55) But as another court pointed out in *Beach v. Government of District Columbia*, 320 F.2d 790, 793 (1963), recognition of a public responsibility is not incompatible with individual liability of certain family members.

The law is full of analogous situations. Streets can be paved over the protest of an abutting property owner. The public benefit and purpose may be clear, yet a charge can be assessed against those benefiting individually. Every fire regulation benefits the public, but the cost of compliance can be thrust on the property owner even if the cost is undoubtedly an economic hardship. See *Queenside Hills v. Saxl*, 328 U.S. 80, 83 (1945) where due process and equal protection objections against enforcement of an onerous fire regulation were rejected.

Therefore, the fact that state mental hospitals undoubtedly benefit the public cannot make the liability herein unconstitutional.

Moreover, the court's assumption that by and large patients are "committed" by court order against their will is outmoded, although this may remain the popular belief. Voluntary admissions<sup>42</sup> and certification by the county health officer are attempted first and formal commitment is, in enlightened communities, merely a last resort.

In summary, analogies of the forceable detention of criminals, with invocation of the old-fashioned fears of the

42. Comment, *Analysis of Legal and Medical Considerations in Commitment of the Mentally Ill*, 47 Yale L.J. 1178 at 1201-1202 (1947). See generally Overholser, *The Voluntary Admission Law: Certain Legal and Psychiatric Aspects*, 80 Am. J. Psychiatry 475 (1924). For discussion of the actual practice in California and the trend toward eliminating "commitment", see Nix, *Recent Procedural Revisions in the Psychiatric Department, Superior Court of Los Angeles County*, 34 L.A. Bar. Bull. 291 at 292-93, 309 (1959).



"dangerous lunatic" who must be incarcerated against his will for the good of the public, assist not at all in judging the constitutionality of relative's responsibility for the mentally ill in light of the modern use of mental hospitals and the adjustment legal machinery has made and must still make to assist in the "reclamation [of the patient] as a productive member of society." (R. 55)

**D. Under the Liability for Support Imposed by the California Statute, There Cannot Be Arbitrary Exaction from the Patient's Estate or from Relatives.**

**1. There Is Statutory Protection for the Patient's Estate from Such Exaction.**

California Welfare and Institutions Code section 6650 imposes upon the patient's estate an unconditional liability for his support; payment, however, is subject to the probate court's determination, under section 6655 of the same code, that the patient will not be released from the hospital or if released will not become a public charge.

A certificate from the medical superintendent of the state hospital is prima facie evidence that the patient's recovery is beyond reasonable hope. If the probate court is satisfied that the patient will not be released it orders the guardian to pay the amount due. *Dept. of Mental Hygiene v. Mannina*, 168 Cal. App. 2d 215, 219; 335 P.2d 694, 697 (1959); *Estate of Setzar*, 192 Cal. App. 2d 634, 641-642; 13 Cal. Rptr. 683, 687 (1961).<sup>43</sup>

Section 6655 directs the guardian of the patient's estate to pay the cost of care of the ward. Such payment is ordered if the ward "has sufficient estate for the purpose" . . . "to the extent of the estate." The guardian may be directed by

<sup>43</sup> California is but one of a number of states which require the preservation of a cushion of assets against the patient's eventual release to avoid his becoming a charge against the state. Mernitz: "Private Responsibility for the Costs of Care in Public Mental Institutions" 36 Ind. L.J. 443, 456 (1960-61).

the probate court to sell so much of the estate's personal or real property or both as is necessary to pay these costs.<sup>44</sup>

These code sections indicate that the Legislature has shown a dual concern: (1) preventing impoverishment of a patient who may be released from a mental hospital and (2) recovering costs of care from the patient's estate. To implement this duality of purpose the California courts have approved "equitable liens" on the patient's estate in favor of the Department of Mental Hygiene as security for accrued and future costs of care, thereby reasonably securing the state's claim, but avoiding the immediate liquidation of the patient's assets. Thus both the incompetent and the state are protected. *Estate of Hicks*, 228 A.C.A. 704; 39 Cal. Rptr. 698 (1964); *Estate of Mims*, 202 Cal. App. 2d 332; 20 Cal. Rptr. 667 (1962); *Estate of Setzer*, 192 Cal. App. 2d 634; 13 Cal. Rptr. 683 (1961).

If the patient is discharged, and the property must be sold for her support, the equitable lien may be subordinated by the court to this purpose. *Estate of Hicks*, 228 A.C.A. at p. 708; 39 Cal. Rptr. at p. 700.

In the instant case an equitable lien had been ordered by the probate court on the patient's own real property for the sum of \$6,425.00 covering accrued costs of care for the period ending September 30, 1958 and for future charges (R. 9).

The respondent as administratrix of the estate of the patient's deceased daughter rejected the department's creditors' claim of \$7,554.22. This claim was to obtain reimbursement for the patient's care for the period August 25, 1956 to August 24, 1960, the four-year period preceding the daughter's death. Instead, the respondent in her role

<sup>44</sup> Further protection is afforded the patient and responsible relatives by Code of Civil Procedure section 345 which limits recovery for past charges to a four-year period.

as guardian of the incompetent's estate offered to pay the amount of the claim from the assets of the patient.<sup>45</sup> Since such payment could only be made with the probate court's approval, *McCracken v. Lott*, 3 Cal. 2d 164, 44 P.2d 355 (1935); *Guardianship of Cuen*, 142 Cal. App. 2d 258, 298 P.2d 545 (1956), she requested an itemized statement of all accrued charges to submit to the court (R. 9-10). However, payment of these charges would have exhausted the patient's estate. The probate court therefore would not have approved such payment in full absent satisfactory proof that there was no hope of the patient's release from the hospital. Respondent did not contend the patient was chronically insane. Rather, she insisted that exhaustion of her ward's estate was required as a matter of law before the daughter's estate could be held liable.<sup>46</sup>

By stating that the incompetent mother "owns . . . some \$11,000 in cash" (R. 53), the court below implied that this sum is available for her support. This is not correct; indeed, it is misleading. The patient's real property was sold for approximately that sum and the proceeds are held in escrow

45. In this case the respondent is guardian of the incompetent (the patient) and also administratrix of the decedent's estate. To the extent Mrs. Kirchner can pay the obligations of the decedent's estate out of her ward's assets, she will inherit an equal amount from the estate of which she is both primary beneficiary and administratrix. (R. 15-16).

46. The complete impoverishment of a patient as a prerequisite to proceeding against a relative would result in depriving the patient of even a modest allowance for his basic needs. Analogous situations indicate that no constitutional considerations dictate such harsh treatment. In *Commonwealth v. Kotzker*, 179 Pa. Super. 521, 525; 118 Atl. 2d 271, 273 (1955), the court declared that "[Indigent] encompasses also those persons who have some limited means . . . but whose means are not sufficient to adequately provide for their maintenance and support." Cf. 42 U.S.C. 302 (a)(10)(A) providing that although a state disregards a portion of an applicant's income it may still qualify for matching Federal funds for old-age assistance programs. See *San Bernardino County v. Simons*, 46 Cal. 2d 394; 296 P.2d 329 (1956).

(R. 9). The actual net amount payable to the guardianship estate is not alleged. Assuming the entire sum held in escrow is payable to the guardianship estate, the incompetent does not "own" some \$11,000 in cash. This sum is subject to payment to the department of the charges which accrued prior to the period covered in the claim against the daughter's estate (August 24, 1956). It is further subject to costs of care for an undetermined period after the daughter's death. In addition it is subject to guardian and attorneys' fees and other costs of administration.

Acceptance of the respondent/guardian's offer to pay from the patient's estate the \$7,554.22 and all accrued charges would necessarily include the amount due for the period prior to August 24, 1956. This would have completely exhausted the estate. There would be nothing left for the patient's future personal needs, burial expenses or costs of care after August 24, 1960. The law does not demand such a harsh result.

## **2. There is Also Statutory Protection for the Responsible Relatives.**

Section 6650 imposes upon certain relatives a liability for support, subject however to the ability-to-pay provisions of sections 6651 and 6653 with judicial review under Code of Civil Procedure section 1094.5. Since the obligation is joint and several there is a right to contribution under Civil Code section 1482. The adult child obligation may be entirely eliminated in the event of parental abandonment.<sup>47</sup>

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47. Release by judicial decree from all statutory obligations to support a parent may be obtained under Civil Code § 206.5 by an adult child whose parent abandoned him for at least two years prior to the child's reaching the age of 18 years. The child must produce proof of abandonment and that during this period the parent was physically and mentally able to support him. *County of Alameda v. Clifford*, 187 Cal. App. 2d 714; 10 Cal. Rptr. 144 (1960); *Johns v. Kleinkoff*, 189 Cal. App. 2d 711; 11 Cal. Rptr. 412 (1961).

The court below expressed concern over the power of an administrative agent to select a person from the classes of relatives designated by the Legislature to uphold the imposition of support liability and in the process "denude" the relatives of their assets (R. 58). That this is impossible is apparent from examining other statutory provisions that complement section 6650.

In *Dept. of Mental Hygiene v. McGilvery*, 50 Cal. 2d 742, 751; 329 P.2d 689, 698 (1958), the California Court held that section 6650 imposes a liability on the named close relatives and their estates and the estate of the incompetent for the cost of care at a state hospital. The court recognized that this liability was subject to the safeguards afforded by sections 6651 and 6653.

Section 6651 provides, in part, that,

"The Director of Mental Hygiene may reduce, cancel or remit the amount to be paid by the estate or the relatives, as the case may be, liable for the care, support, and maintenance of any mentally ill person . . . who is a patient of a State Hospital for the mentally ill, on satisfactory proof that the estate or relatives, as the case may be, are unable to pay the cost of such care, support and maintenance. . . ."

The record does not show that respondent sought this administrative relief. In *McGilvery*, *supra*, 50 Cal. 2d at 761, 329 P.2d at 699, the court stated,

"It must be presumed in the present case that if an application had been made for a determination of the decedent's inability to pay and satisfactory proof presented, the director might have reduced, cancelled or remitted the amount to be paid in accordance with section 6651."

No reason is given for a contrary presumption now.

Section 6653 requires the department to make an investigation to determine whether the patient has any relative or relatives responsible under the provisions of section 6650 for the payment of the cost of maintenance. This section compels the department to "ascertain the financial condition of such relative or relatives to determine whether in each case such relative or relatives are in fact financially able to pay such charges." The department is further directed to make findings in connection with its investigation.

Judicial review after a final decision by any administrative agency can be had by use of the Writ of Mandate (Code of Civ. Proc. § 1094.5).<sup>48</sup> See *Temescal Water Co. v. Dept. of Public Works*, 44 Cal. 2d 90, 100, 101; 280 P.2d 1, 7 (1955); *Dept. of Mental Hygiene v. McGilvery*, 50 Cal. 2d at pp. 760-761, 329 P.2d at p. 699. The court's function in such case is to rectify an arbitrary or discriminatory administrative decision.

In addition to the foregoing, the safeguard of joint debtor contribution is available. California Welfare & Institutions Code section 6650 expressly provides that the obligation is joint and several. Consequently, under California Civil Code section 1432 the joint and several obligor, "who satisfies more than his share of the claim against all, may require a proportionate contribution from all the parties joined with him." The court below was in error in stating that relatives who contribute to the patient's care in accordance with section 6650 have no right to recoup from the assets of the patient (R. 58).

The right to contribution given under Civil Code section 1432 is controlled by principles of equity. *Jackson v. Lacy*, 37 Cal. App. 2d 551, 559; 100 P.2d 313, 317 (1940). It can-

48. Kleps, *Certiorarified Mandamus: Court Review of California Administrative Decisions 1939-1949*, 2 Stan. L. Rev. 285 (1950).



not be invoked arbitrarily. For example, equity would not permit recoupment from the estate of the patient if to do so would leave him a burden upon society (Section 6655; see *McCracken v. Lott*, 3 Cal. 2d 164, 44 P.2d 355 (1935)) nor would equity permit recoupment with mathematical nicety from other joint and several obligors in disregard of their financial ability. Cf. *Jackson v. Lacy*, 37 Cal. App. 2d at p. 560; 100 P.2d at p. 318. However, within the limits indicated there is unquestionably a right of contribution from other joint and several obligors including the patient's estate.

This rule of law has been applied to similar situations, e.g., where one child paid for the support of an indigent parent and the other children were required to contribute on the express or implied joint and several obligation. *Manthey v. Schueler*, 126 Minn. 87; 147 N.W. 824 (1914); *Wood v. Wheat*, 226 Ky. 762, 764, 11 S.W. 2d 916, 918 (1928); *Mallatt v. Luihn*, 206 Ore. 678, 695-696, 294 P.2d 871, 882 (1956). See also *Muse v. Muse*, 215 La 238, 242, 40 So. 2d 21, 23 (1949).

In brief, the statutory protections afforded the family members from arbitrary action of an administrative agent to impose the support liability patently make it impossible to arbitrarily "denude" the relatives of their assets.

## II.

### THE DECISION BELOW DENIED PETITIONER PROCEDURAL DUE PROCESS

In urging a denial of procedural due process, petitioner is in a peculiar position by virtue of being itself an arm of the State. Nevertheless, it is urged that when petitioner is before any state court, it should be accorded the fairness due any litigant.

In this case, the Supreme Court of California had before it numerous briefs, a decision below, and oral argument, all limited to whether equal protection required a priority in liabilities and whether exhaustion of the patient's estate preceded the liability of responsible relatives. At no time did respondent question the constitutionality of this latter liability. Despite the clear opportunity to command argument on this basic and completely different question, the court remained silent, only to surprise both parties with a decision whose *ratio decidendi* was that any imposition of this liability upon anyone (other than the patient), regardless of ability to pay, was a denial of equal protection of the law.

By its petition for rehearing, petitioner sought opportunity to argue the novel holding. The petition was denied.<sup>49</sup>

Petitioner reiterates that at no point during this long litigation was this issue, treated as basic by the eventual holding of the California Supreme Court, aired for discussion by either side. Petitioner maintains that this is a denial of due process.

We submit that this case comes squarely within the rule of *Saunders v. Shaw*, 244 U.S. 317 (1917). There Mr. Justice Holmes noted:

"But when the act complained of is the act of the Supreme Court, done unexpectedly at the end of the proceeding, when the plaintiff in error no longer had any right to add to the record, it would leave a serious gap in the remedy for infraction of constitutional rights if the party aggrieved in such a way could not come here. The defendant was not bound to contemplate a decision of the case before his evidence was

49. Statistics gathered from California Judicial Council's 19th Biennial Report (1963) indicates that approximately 98% of the petitions for rehearing are denied.

heard and therefore was not bound to ask a ruling or to take other precautions in advance." 244 U.S. at 320.

See also *Brinkerhoff-Faris v. Hill*, 281 U.S. 673, at p. 677 (1930) where again the dispositive issue "was not suggested by anyone in the entire litigation until the Supreme Court filed its opinion. . . ."

### CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the court below should be reversed.

Dated, San Francisco, California,  
December 4, 1964.

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(Appendices follow)

## **Appendix A**

### **PERTINENT STATUTORY PROVISIONS**

#### **California Welfare and Institutions Code.**

##### **Article 5. Property and Support of Patients**

6650. The husband, wife, father, mother, or children of a mentally ill person or inebriate, the estates of such persons, and the guardian and administrator of the estate of such mentally ill person or inebriate, shall cause him to be properly and suitably cared for and maintained, and shall pay the costs and charges of his transportation to a state institution for the mentally ill or inebriates. The husband, wife, father, mother, or children of a mentally ill person or inebriate, and the administrators of their estates, and the estate of such mentally ill person or inebriate, shall be liable for his care, support, and maintenance in a state institution of which he is an inmate. The liability of such persons and estates shall be a joint and several liability and such liability shall exist whether the mentally ill person or inebriate has become an inmate of a state institution pursuant to the provisions of this code or pursuant to the provisions of Sections 1026, 1368, 1369, 1370, and 1372 of the Penal Code.

(Amended by Stats. 1941, Ch. 916, by Stats. 1943, Ch. 1052, by Stats. 1945, Ch. 247, and by Stats. 1947, Ch. 625.)

6651. The rate for the care, support, and maintenance of all mentally ill persons and inebriates at the state hospitals for the mentally ill where there is liability to pay for such care, support, and maintenance, shall be reviewed each fiscal year and fixed at the statewide average per capita cost of maintaining patients in all state hospitals, as determined by the Director of Mental Hygiene. The rate thus fixed shall continue in effect until a new rate is fixed. The Director of Mental Hygiene may reduce, cancel or remit the amount

to be paid by the estate or the relatives, as the case may be, liable for the care, support, and maintenance of any mentally ill person or inebriate who is a patient of a state hospital for the mentally ill, on satisfactory proof that the estate or relatives, as the case may be, are unable to pay the cost of such care, support, and maintenance or that the amount is uncollectible. In any case where there has been a payment under this section, and such payment or any part thereof should be refunded because of the death, leave of absence, or discharge of any patient of such hospital, such amount shall be paid by the hospital or the Department of Mental Hygiene to the person who made the payment upon demand, and in the statement to the Controller the amounts refunded shall be itemized and the aggregate deducted from the amount to be paid into the State Treasury, as provided by law. If any mentally ill person or inebriate dies at any time while his estate is liable for his care, support, and maintenance and other expenses at a state hospital, the claim for the amount due may be presented to the executor or administrator of his estate, and paid as a preferred claim, with the same rank in order of preference, as claims for expenses of last illness.

(Amended by Stats. 1939, Ch. 442, by Stats. 1941, Ch. 913, by Stats. 1943, Ch. 1052, by Stats. 1953, Ch. 549, by Stats. 1954, Ch. 3, by Stats. 1959, Ch. 186; and by Stats. 1961, Ch. 176.)

6653. The department shall, following the admission of a patient into a State hospital for the insane, cause an investigation to be made to determine the moneys, property, or interest in property, if any, the patient has, and whether he has a duly appointed and acting guardian to protect his property and his property interests. The department shall also make an investigation to determine whether the patient

has any relative or relatives responsible under the provisions of Section 6650 for the payment of the costs of transportation and maintenance, and shall ascertain the financial condition of such relative or relatives to determine whether in each case such relative or relatives are in fact financially able to pay such charges. All reports in connection with such investigations, together with the findings of the department, shall be records of the department, and may be inspected by interested relatives, their agents, or representatives at any time upon application.

6655. If any person committed to a State mental hospital has sufficient estate for the purpose, the guardian of his estate shall pay for his care, support, maintenance, and necessary expenses at the mental hospital to the extent of the estate. Such payment may be enforced by the order of the judge of the superior court where the guardianship proceedings are pending. On the filing of a petition therein by the department, showing that the guardian has failed, refused, or neglected to pay for such care, support, maintenance, and expenses, the court, by order, shall direct the payment by the guardian. Such order may be enforced in the same manner as are other orders of the court.

If at any time there is not sufficient money on hand in the estate of a committed person to pay the claim of a State mental hospital for his care, support, maintenance, and expenses therein, the court may, on petition of the guardian of the estate, or if the guardian fails, refuses, or neglects to apply, on the petition of the department, make an order directing the guardian to sell so much of the other personal or real property or both, of the person as is necessary to pay for the care, support, maintenance, and expenses of the person at the mental hospital. From the proceeds of such sale, the guardian shall pay the amount due for the care,



support, maintenance, and expenses at the mental hospital, and also such other charges as are allowed by law.

Payment for the care, support, maintenance, and expenses of person at a State hospital shall not be exacted, however, if there is likelihood of the patient's recovery or release from the hospital and payment will reduce his estate to such an extent that he is likely to become a burden on the community in the event of his discharge from the hospital. If a certificate from the medical superintendent of the State hospital in which the person is confined as a patient is filed in the office of the county clerk with the papers in the guardianship proceedings of the patient, in which certificate the medical superintendent states that the patient is suffering from a chronic form of insanity, and that in his opinion a recovery is beyond reasonable hope and that the patient will in all probability continue to be a charge in a State hospital until death, such certificate shall be prima facie evidence that the patient is not likely to recover or to be released from the hospital, and the guardian shall pay the amount due for his care, support, maintenance, and expenses at the hospital and such other charges as are allowed by law out of any moneys of the estate in his possession.

(Amended by Stats. 1941, Ch. 917, and by Stats. 1943, Ch. 1052.)

#### **California Civil Code Section 1432.**

A party to a joint, or joint and several obligation, who satisfies more than his share of the claim against all, may require a proportionate contribution from all the parties joined with him.

### **CONSTITUTION OF THE UNITED STATES**

#### **Amendment XIV**

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens

of the United States and of the State wherein they reside.  
No State shall make or enforce any law which shall abridge  
the privileges or immunities of citizens of the United States;  
nor shall any State deprive any person of life, liberty, or  
property, without due process of law; nor deny to any per-  
son within its jurisdiction the equal protection of the laws.

## Appendix B

39 N.Y.U. L.Rev. 858 (1964)†

**Compulsory Contribution to Support of State Mental Patients Held Deprivation of Equal Protection.\***

Public mental health facilities represent one of the largest categories of state expenditures, and the amount devoted to their maintenance and expansion doubles every few years.<sup>1</sup> Statutes in all fifty states and the District of Columbia render one or more private individuals liable for the cost of support and care of inmates of state hospitals.<sup>2</sup> This

† The permission of the editors of the New York University Law Review to print this Comment in full is gratefully acknowledged. Because this brief is being filed prior to printing of the review, we are using this means of making it available to the Court and parties.

\* Department of Mental Hygiene v. Kirchner, 60 Cal. 2d 716, 388 P.2d 720, 36 Cal. Rptr. 488, cert. granted, 33 U.S.L. Week 3114 (U.S. Oct. 13, 1964). (No. 111).

1. Counsel of State Governments, Book of the States, 1964-65, at 395 (1964).

2. Ala. Code tit. 45, § 257 (1959); Alaska Stat. § 47.30.270 (1962); Ariz. Rev. Stat. Ann. § 36-520 (Supp. 1963); Ark. Stat. Ann. § 59-230 (1947); Cal. Welfare & Inst'n Code § 6650; Colo. Rev. Stat. §§ 36-10-7, 71-1-15 (1953); Conn. Gen. Stat. Ann. § 17-295 (Supp. 1963); Del. Code Ann. tit. 16, § 5127 (1953); D.C. Code Ann. § 21-318 (1961); Fla. Stat. § 394.22(13) (1961); Ga. Code Ann. § 35-1104 (1962); Hawaii Rev. Laws § 330-22 (Supp. 1963); Idaho Code Ann. § 66-354 (Supp. 1963); Ill. Ann. Stat. ch. 91½, § 9-19 (Smith-Hurd Supp. 1963); Ind. Ann. Stat. § 22-401(a) (Supp. 1963); Iowa Code Ann. § 230.15 (Supp. 1963); Kan. Gen. Stat. Ann. § 59-2006 (Supp. 1961); Ky. Rev. Stat. § 203.080 (1963); La. Civ. Code Ann. art. 119, 227 (West 1952); La. Rev. Stat. Ann. § 28:143 (1951); Me. Rev. Stat. Ann. ch. 27, § 135C (Supp. 1963); Md. Ann. Code art. 59, § 5 (Supp. 1963); Mass. Gen. Laws Ann. ch. 123, § 96 (Supp. 1963); Mich. Stat. Ann. § 14.811 (Supp. 1963); Minn. Stat. Ann. § 240.51 (Supp. 1963); Miss. Code Ann. §§ 6909-13, 7357 (1952); Mo. Ann. Stat. § 202.260 (1962); Mont. Laws 1963, ch. 213, §§ 2, 4, at 642; Mont. Rev. Codes Ann. § 71-233 to -235 (1962); Neb. Rev. Stat. § 83-352 (Supp. 1963); Nev. Rev. Stat. § 433.370 (1957); N.H. Rev. Stat. Ann. § 8:41 (1955); N.J. Stat. Ann. § 30:4-66 (1964); N.M. Stat. Ann. § 34-2-21 (1953); N.Y. Mental Hygiene Law § 24(2); N.C. Gen. Stat. § 143-121 (1964); N.D. Cent. Code § 25-09-04 (1963); Ohio Rev. Code Ann. § 5121.06 (Page

liability occasionally rests solely on the estate of the patient alone, but more commonly extends to close relatives of the inmate.<sup>3</sup> An example of the latter type of statute is Section 6650 of the California Welfare and Institutions Code, which provides that "the husband, wife, father, mother or children of a mentally ill person . . . shall be liable for his care, support and maintenance in a state institution of which he is an inmate." In California, the collections under this section have totalled over five and one-half million dollars annually<sup>4</sup>—a sum which will be reduced to zero in the future by the effect of the recent decision in *Department of Mental Hygiene v. Kirchner*.<sup>5</sup>

In 1953 Auguste Schaeche, the mother of Ellinor Vance, was adjudged mentally ill and committed to a state hospital. When the daughter died in 1960, the Department of Mental Hygiene brought suit against her estate under section 6650 to recover the cost of the mother's maintenance in the state hospital. The mother had a small estate of her own at that time, which the daughter's administratrix argued should first be exhausted.

Supp. 1963); Okla. Stat. Ann. tit. 43A, § 115 (1954); Ore. Rev. Stat. § 179.630 (Supp. 1963); Pa. Stat. Ann. tit. 71, § 1783 (1962); R.I. Gen. Laws Ann. §§ 26-3-17, 40-8-13 (1956); S.C. Code Ann. § 32-1029 (1962); S.D. Laws 1964, ch. 104, §§ 2, 4, at 134; Tenn. Code Ann. §§ 33-629 to 630 (Supp. 1963); Tex. Rev. Civ. Stat. Art. 3196a(2) (1952); Utah Code Ann. § 64-7-6 (1961); Vt. Stat. Ann. tit. 18, § 2685 (1959); Va. Code Ann. § 37-125.1 (Supp. 1963); Wash. Rev. Code Ann. § 71.02.230 (1962); W. Va. Code Ann. § 2672 (Supp. 1963); Wis. Stat. § 46.10 (1961); Wyo. Stat. Ann. § 25-81 (Supp. 1963).

3. Only Arizona, Florida, New Mexico and South Carolina place liability exclusively on the patient.

4. Respondent's Petition for Rehearing, app. E, Affidavit of Paul Downard, Chief, Bureau of Patient's Accounts, Department of Mental Hygiene of the State of California, *Department of Mental Hygiene v. Kirchner*, 60 Cal. 2d 716, 388 P.2d 720, 36 Cal. Rptr. 488, cert. granted, 33 U.S.L. Week 3114 (U.S. Oct. 13, 1964) (No. 111).

5. 60 Cal. 2d 716, 388 P.2d 720, 36 Cal. Rptr. 488, cert. granted, 33 U.S.L. Week 3114 (U.S. Oct. 13, 1964) (No. 111).

The trial court granted the Department's motion for judgment on the pleadings. The California District Court of Appeal affirmed, holding that liability under section 6650 was absolute, not conditioned on the prior exhaustion of the assets of the incompetent's estate. The California Supreme Court reversed. The court noted that it had recently interpreted the liability imposed by section 6650 as absolute,<sup>6</sup> but went on to hold that section 6650 denied the named relatives the equal protection of the laws.<sup>7</sup> The court considered the operation of state mental institutions a proper state function, and concluded that it was therefore arbitrary to charge any class of individuals, excepting perhaps the inmate himself,<sup>8</sup> with the costs of maintaining such institutions.<sup>9</sup> Implicit in this reasoning is the proposition that a proper state function necessarily is exclusively a state function.

In finding that responsibility for the care of mental inmates rested exclusively on the state, the court cited as dispositive a 1963 decision<sup>10</sup> in which it had held that the state could not constitutionally impose liability for support on the father of one committed to a state hospital before

6. *Id.* at 719, 388 P.2d at 722, 36 Cal. Rptr. at 489.

7. The court's reliance was apparently on the equal protection clause of the United States Constitution, rather than on articles 11 and 23 of the California Constitution. The words "equal protection," which the court consistently used in its opinion, do not appear in the analogous sections of the California Constitution.

8. This exception has since been affirmed in *Department of Mental Hygiene v. Schumpert*, ..... Cal. App. 2d ....., 39 Cal. Rptr. 698 (1964).

9. 60 Cal. 2d at 720, 388 P.2d at 722, 36 Cal. Rptr. at 490.

10. *Department of Mental Hygiene v. Hawley*, 59 Cal. 2d 247, 379 P.2d 22, 28 Cal. Rptr. 718 (1963).

being tried for murder.<sup>11</sup> It reasoned that there was no essential difference between civil and criminal commitments: both protected society from the confined person and sought his reclamation as a productive citizen. This identity of purpose called for identical judicial treatment. In addition, the court explicitly acknowledged it was affected by the "social evolution" of the last fifty years, which resulted in an expanded *parens patriae* principle.<sup>12</sup> The court also asserted that the state had established inconsistent legislative policies by ordering that the assets of inmates not be so depleted as to render them burdens upon the community if discharged,<sup>13</sup> while at the same time permitting the Department freely to tax the inmate's relatives.

Other considerations may be advanced which tend to support the wisdom of the result the court reached. Many would argue that relatives of a state mental patient ought not to be charged for his care and support, because no fault can be assigned to them for the existence of the condition which makes such care necessary. It is possible that undesirable feelings of guilt or shame may be engendered in both the relatives and the patient by an enforced assumption of responsibility for a condition for which no one is at fault. Another possibility is that relative responsibility is detrimental, rather than conducive, to an attitude of family responsibility, since the relatives may, in fact, resent the patient as an economic and social liability. Furthermore, the operation of relative-responsibility laws may involve undesirable adjunctive effects—such as the public inquiry into private financial circumstances usually re-

11. The rationale of the Hawley decision was that such a commitment is "part and parcel of the administration of the criminal law," *id.* at 251, 379 P.2d at 25, 28 Cal. Rptr. at 721, and private individuals cannot constitutionally be charged for costs of the detention of criminals since such detention is exclusively a state function.

12. 60 Cal. 2d at 722, 388 P.2d at 723, 36 Cal. Rptr. at 491.

13. Cal. Welfare & Inst'ns Code § 6655.



quired before a charge can be made.<sup>14</sup> These considerations possibly have had an effect upon recent legislative changes in California which may signify a trend toward abandonment of relative responsibility for services rendered to individual by the state.<sup>15</sup> But while these considerations may help to justify the *Kirchner* result as sound social policy, a valid judicial path to that result was not articulated. In particular, it is doubtful that the *Kirchner* result can be rationalized on the basis of the equal protection clause, as that clause has thus far been interpreted.

A question of equal protection can arise whenever a law operates differently upon one segment of the body politic than upon the rest. For example, a sales tax imposes upon the class "purchasers of goods" an obligation which is different from that borne by the class "non-purchasers of goods." In such legislation, the issue of equal protection tests the constitutional validity of the particular classification made.

In considering the issue of equal protection, two general principles guide the judicial approach. The first is that a legislative distinction should be upheld if any facts can reasonably be conceived which support it.<sup>16</sup> The other recognizes that the states have a wide latitude in creating

14. Cf. Cal. Welfare & Inst'n's Code § 6653: "The department shall, following the admission of a patient into a State hospital . . . ascertain the financial condition of such [responsible] relatives. . . ."

15. Cal. Welfare & Inst'n's Code § 7011.5 now relieves parents of mentally deficient persons from the liability for support formerly attributed to them by § 5260. Similarly, liability of relatives for state aid to the blind under former § 3088 of the Cal. Welfare & Inst'n's Code has been removed by the new § 3011, and relatives' liability for support of the needy disabled is specifically removed by § 4011.

16. *Crescent Cotton Oil Co. v. Mississippi*, 257 U.S. 129, 137 (1921).

legislative classifications, and that only a purely arbitrary classification should be voided on equal protection grounds.<sup>17</sup>

A peculiarity of equal protection is that to an empirical observer of judicial results there appears to be not one doctrine, but two. Where the legislative line of discrimination complained of is based upon characteristics such as race or national origin, judicial activism has been the rule, and statutes have frequently been struck down on equal protection grounds. On the other hand, courts treating statutes which classify on other bases, such as those which distribute an economic burden unequally on different classes, have typically exercised self-restraint.<sup>18</sup> The decision in *Kirchner* is significant in that it strikes down a statute of the latter type.<sup>19</sup>

The question of equal protection is often difficult because of the internal dilemma the doctrine presents. It has been said both that "the equal protection of the laws is a pledge of the protection of equal laws,"<sup>20</sup> and that laws may clas-

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17. *Williamson v. Lee Optical Co.*, 348 U.S. 483, 487-89 (1955).

18. This distinction is noted and documented in Pritchett, *The American Constitution* 614-17 (1959). See also McKay, *Political Thickets and Crazy Quilts: Reapportionment and Equal Protection*, 61 Mich. L. Rev. 645, 665-77 (1962); Tussman & TenBroek, *The Equal Protection of the Laws*, 37 Calif. L. Rev. 341 (1939). Professor McKay phrases the distinction slightly differently, as between cases involving "basic civil rights of man" and those dealing with "health, morals and general welfare." McKay, *supra* at 666.

19. Toward the end of its opinion the court implies that any classification made solely on the basis of family relationship may be a denial of equal protection—a suggestion which would tend to place § 6650 in the same light as statutes classifying on the prohibited basis of race. The point is not seriously pursued, however, being entirely extraneous to the court's main argument, which treats section 6650 as a statute of the second type mentioned in text. In addition, the cases relied on by the court are entirely inadequate to support the proposition that family relationship is a forbidden basis of classification. See Note, 49 Cornell L.Q. 516 n.2 (1964).

20. *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886).

sify.<sup>21</sup> A law which classifies is, however, a law unequal in its effects. Confusion has therefore resulted, even at the highest judicial levels. For example, in the past courts have held that a classification must be drawn along "natural" lines,<sup>22</sup> but recent Supreme Court decisions are incompatible with this limited approach. Nor is the vague statement that the legislative classification must be "reasonable" of any use as a test of equal protection without further guidance as to what distinguishes a reasonable classification from an unreasonable one.

It is in fact extremely doubtful whether any clear formula now exists for determining the equal protection issue in cases of legislative classification for economic and social purposes. In *Morey v. Doud*,<sup>23</sup> however, the Supreme Court progressed toward a workable definition of the standard of equal protection by consolidating and clarifying several earlier decisions. In that case, an Illinois statute imposed licensing requirements on any firm selling money orders in Illinois, but specifically excepted the American Express Company. The Supreme Court ruled that statutory classifications must be drawn along lines which could appear to a reasonable man to be logically related to the purpose of the law itself.<sup>24</sup> The purpose of the Illinois statute, the Court found, was to provide continuing protection to citizens against sellers of money orders who might be of questionable integrity or solvency.<sup>25</sup> The Court held five-to-four

21. "Special burdens are often necessary for general benefits." *Barbier v. Connolly*, 113 U.S. 27, 31 (1885).

22. E.g., *Pacific Express Co. v. Seibert*, 142 U.S. 339, 354 (1892).

23. 354 U.S. 457 (1957).

24. *Id.* at 466.

25. *Ibid.*

that the classification made between American Express and all other sellers was not reasonably related to this purpose because there was no reason to believe that the superior financial position of American Express could not be equalled by another company.

Three steps therefore seem necessary to a complete judicial analysis of an equal protection problem. The first is to define the purpose of the law under question. Exactly how this purpose is to be determined for use in the equal protection analysis is unclear from the decisions. But if the purpose of a statute is viewed as a fact, it would seem that since courts must search for any reasonably conceivable set of facts which will serve to justify a legislative distinction, courts must also search for any reasonably imaginable purpose which supports the distinction. The second step is to define the classification which is established by the statute; this should be evident from the statute itself. The final step is to determine the validity of the classification by considering the purpose and the classification together: is there any reasonable relation between purpose and classification? Here, there would seem to exist the greatest opportunity for judicial difference of opinion; yet the possibility of caprice is considerably less than under the sweeping inquiry, "is the classification reasonable?"

That the foregoing analysis of equal protection was applied in *Kirchner* seems unlikely. Despite the court's language, there is serious doubt whether the decision turned on a question of equal protection at all. A distinction exists between questioning the validity of a particular legislative classification. Clearly an equal protection issue, and questioning the power of the legislature to make *any* classification, arguably not a part of equal protection proper.<sup>26</sup> The

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26. See Tußmäh & tenBrock, *supra* note 18, at 353-55.

obvious purpose of section 6650 is to obtain funds to help maintain state mental institutions. The classification it made was apparent. But rather than proceeding to consider the relation of the purpose to the classification—the equal protection question—the court found that the purpose was invalid: no law could impose private liability for support of mental patients in state institutions.

So restrictive a view of the legislative power in this area is most unusual. Since 1601, English and American legislatures have provided for private contribution to help sustain the burden of supporting state charges.<sup>27</sup> A great majority of the states presently impose liability for support upon relatives of mental inmates, and no prior decision has been disclosed which denied the states' power to do so.

If the court's conclusion that only the state as a whole may be charged with the support of inmates is unusual, the argument used to reach that conclusion seems even more so under close examination. The court's contention that civil and criminal commitments are alike in nature and purpose presumes that the main purpose of a civil commitment is to protect the rest of society—a view of psychiatric medicine which now seems anachronistic. No longer are the mentally ill locked up in houses of bedlam primarily to protect the rest of society from irksome interferences; the "principal purpose" of hospitalization of the mentally ill, as was recognized long ago by the California court, "is to care for the indigent insane, who in some cases may be successfully treated . . . ."<sup>28</sup> The primary beneficiary under modern psychiatric practice is the patient and his family; society benefits only in a far more restricted sense—from the

27. See 43 Eliz. 1, ch. 2 (1601), for the earliest example.

28. *State Comm'r in Lunacy v. Eldridge*, 7 Cal. App. 298, 305, 94 Pac. 597, 599 (1908).

possibility that successful treatment will result in the inmate's return as a productive citizen.

The court also alluded to the "expanded . . . *parens patriae* principle,"<sup>29</sup> to support its conclusion that the maintenance of state inmates is exclusively a state function. Yet the present breadth of the concept of social responsibility contradicts the court. All fifty states adhere to the policy of requiring private contribution. While it might be the court's view that this legislative policy ought to be changed, it can hardly expect to gain valid support for that view simply by invoking the name of equal protection. "A constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the state, or of *laissez faire* . . ."<sup>30</sup>

Thus the validity of the reasoning used by the court to reach the conclusion that support of state inmates is exclusively a state function is seriously in doubt—and so, therefore, is the further conclusion that the legislature lacks power to place liability for such support on any class less than the whole body politic. Yet, while asserting that lack of power, the court also made an exception which creates an apparent inconsistency: the inmate himself, it appears, may be charged for the cost of his care.<sup>31</sup> However in accord with common notions of justice this exception may be, if support of state inmates is not exclusively a state function, if there is to be an exception, then it should be explained why another attempted exception may not also be allowed. This unanswered question is the crux of the true equal protection issue in the case.

29. 60 Cal. 2d at 722, 388 P.2d at 723, 36 Cal. Rptr. at 491.

30. *Lochner v. New York*, 198 U.S. 45, 75-76 (1905) (dissenting opinion of Holmes, J.).

31. See note 8 *supra* and accompanying text.



The most obvious purpose of section 6650 is reimbursement for the costs of maintaining state mental institutions.<sup>32</sup> The statute singles out a class to bear this burden, consisting of the inmate, his spouse, his parents and his children. Does this classification bear "any reasonable relation to the purpose?" The precise requirements of this "reasonable relation" have not been judicially defined; it is uncertain exactly what type of links must exist between the purpose of a statute and its classification, in order to satisfy the demands of equal protection. Yet three factors in the *Kirchner* case may be identified—causation, benefit and moral duty—which appear to be relevant to the constitutional requirement.

The most important necessary link would seem to be that of causation: is the legislative classification reasonably designed to accomplish the desired purpose?<sup>33</sup> If reimbursement is the purpose of section 6650, then placing liability on the class of relatives named therein would certainly accomplish the purpose—but so would placing liability on any class of persons. The existence of this causal connection alone, therefore, does not distinguish the particular classification made as valid, compared with any other possible classification. It does not seem likely, for instance, that a legislative attempt to place liability for the care of mental inmates only on red-headed men would survive an equal protection challenge. Thus the necessary "reasonable rela-

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32. See *Acting Comm'r of Mental Health v. Williamson*, 330 Mass. 52, 54, 110 N.E. 2d 916, 917 (1953).

33. A clear example of causation as the determinative element of the relationship between classification and purpose is *Railway Express Agency v. New York*, 336 U.S. 106 (1949), where the Court addressed itself to the question whether increased driver vigilance might reasonably be expected to result from a city ordinance restricting the kinds of advertisements to be carried on the sides of trucks.

tion" between purpose and classification must contain additional elements.

When a class of persons has benefited from state activities, and the legislature seeks by statute to assess a portion of the community for a share of the cost of those activities, it seems reasonable that the state should assess the class which has benefited most. If benefit is a valid element of the "reasonable relation" necessary to satisfy equal protection, then section 6650 again seems to meet the constitutional requirement. Because of their emotional and social involvement, close relatives of a mentally ill person are the class most likely to be benefited by relief from anxiety and financial strain, when the state assumes care of the patient. In this respect, then, the classification made in section 6650 bears a different and more reasonable relationship to its purpose than other classifications.

Finally, if particular persons have a common law or a strong moral duty to act in a way which would accomplish the purpose sought by the legislature, then it may be reasonable to impose a statutory duty identical with their common law or moral duty.<sup>34</sup> In this instance also, the classifications may justifiably be said to bear a reasonable relation to the legislative purpose. The conclusion which seems inescapable is that the legal theory upon which the California court explicitly relied does not support its reasoning.

The imposition of liability for the care of inmates of state mental institutions is a nationwide practice. Statutes in forty-two states create liabilities upon persons who would otherwise have no legal duty to support the inmate. The rest apparently make clear that persons otherwise obligated to support an incompetent are not relieved of that duty

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34. The existence of this moral duty was of the essence in the court's opinion in *Beach v. District of Columbia*, 320 F.2d 790 (D.C. Cir. 1963), which upheld a statute very similar to § 6650.

merely because of the incompetent's commitment to a state hospital.<sup>35</sup> The *Kirchner* court's reasoning would invalidate all similar liabilities created in relatives by statute,<sup>36</sup> and would cast serious doubt on the pre-existing common-law duties of support when applied to contributions for the maintenance of a state mental patient. The entire burden of maintaining state mental institutions, less whatever amount might be recoverable from the estates of inmates themselves, would be thrown upon the general tax structure of the states, already loaded to capacity in some instances.<sup>37</sup> Furthermore, other welfare statutes which commonly require contribution from relatives for such programs as state welfare payments to indigents<sup>38</sup> and medical assistance to the aged<sup>39</sup> would be invalidated if courts began to denote these various functions as belonging exclusively to the state as a whole.

35. The statutes in Georgia, Louisiana, Missouri, Virginia and Wisconsin seem only to reaffirm the liability of those persons, such as husbands or parents of a minor child, who would normally be legally responsible for the care of the patient if he were not in a state hospital. Disregarding Arizona, Florida, New Mexico and South Carolina, which impose liability on the inmate only (see note 3 *supra*), the remaining 41 states and the District of Columbia impose liability on persons not otherwise responsible, such as children of an inmate.

36. The close attention being paid to the final outcome of *Kirchner* in other jurisdictions is explicit in a recent interlocutory ruling by the New Jersey Supreme Court, which remanded a similar case for trial "of the important constitutional . . . questions dealt with in *Department of Mental Hygiene v. Kirchner*." *Pennhurst State School v. Goodhart*, 42 N.J. 266, 200 A.2d 112 (1964).

37. See Mernitz, *Private Responsibility for the Costs of Care in Public Mental Institutions*, 36 Ind. L.J. 443, 444 (1961):

38. E.g., N.Y. Code Crim. Proc. § 914.

39. E.g., N.Y. Soc. Welfare Law § 252.

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No. 111

IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1964

DEPARTMENT OF MENTAL HYGIENE OF THE  
STATE OF CALIFORNIA,

Appellant,

vs.

EVELYN KIRCHNER, ADMINISTRATRIX OF THE  
ESTATE OF ELLINOR GREEN VANCE,

Appellee.

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**AMICUS CURIAE BRIEF OF THE STATE OF OHIO  
IN SUPPORT OF THE BRIEF OF THE DEPARTMENT  
OF MENTAL HYGIENE OF THE STATE OF  
CALIFORNIA, APPELLANT**

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**AMICUS CURIAE BRIEF OF THE STATE OF OHIO  
IN SUPPORT OF THE BRIEF OF THE DEPARTMENT  
OF MENTAL HYGIENE OF THE STATE OF  
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**REASONS FOR ENTERING APPEAL AS AMICUS  
CURIAE**

The application of the equal protection clause by the Supreme Court of California in the case of *Department of Mental Hygiene v. Kirchner*, 388 P. (2), 720, 36 Cal. Rptr.,

488, is of such far-reaching effect that it casts a formidable shadow upon the validity of pay-patient statutes enacted by the State of Ohio and substantially all of the states fixing the responsibility between the state and certain named individuals for the cost of the care and treatment of patients in state mental institutions. The State of Ohio like that of California has designated that when financially able the patient and named relatives, i.e., husband or wife, father and/or mother, and adult children, shall bear all or a portion of the cost of care and treatment of the patient. Sections 5121.01, *et seq.*, Ohio Revised Code.

Although the Ohio statutes are not identical in language and application to those of California herein challenged, the statutes are similar in principle. Therefore, in order to preserve the right of a state legislature to determine the economic policies of the state, the responsibility of the state in providing and supporting its welfare institutions, and the responsibility of persons benefited either directly or indirectly and legally or morally responsible for the welfare of their immediate families, the State of Ohio enters this case as *amicus curiae* in support of the argument and position of the Department of Mental Hygiene of California.



## ARGUMENT

As ably set forth in the argument of the Appellant, there are many sound bases for critical review of the opinion of the Supreme Court of California. For purposes of emphasis, some of the basic objections are set forth in brief herein.

### **The Constitutional Question Raised Herein Had Been Determined.**

The California Supreme Court did not have before it for consideration and guidance the case of *Beach v. District of Columbia*, 320 F. (2d), 790, in which a federal court in 1963 upheld the validity of a statute imposing financial liability upon a father for the care and treatment of his adult daughter in a mental institution of the District of Columbia. Although this case was determined upon the due process clause of the Constitution such reasoning and conclusions are equally dispositive of this constitutional question based upon equal protection of the laws. *Bolling v. Sharpe*, 347 U.S. 497. The California court also failed to give sufficient attention to cases from other jurisdictions in which enforcement of similar statutes was challenged unsuccessfully. *People v. Hill*, 163 Ill. 186, 46 N.E., 796; *State v. Bateman*, 110 Kan. 546, 204 Pac. 682; *In Re Idleman's Commitment*, 146 Or. 13, 27 P. (2d), 305; *Rice, Guardian v. State of Ohio*, 14 Ohio App., 9.

### **Proper Consideration Was Not Given Prior California Cases.**

The California Supreme Court did not give proper consideration to prior California cases such as *Department of Mental Hygiene v. Hawley*, 59 Cal., (2d), 247, 379 P. (2d) 22; *Department of Mental Hygiene v. McGilvery*, 50 Cal. (2d), 204, 329 P. (2d) 689; *Estate of Yturburru*, 134

Cal. 567, 66 Pac. 729; *State Commission in Lunacy v. Eldridge*, 7 Cal., App., 298, 94 Pac. 597.

**Proper Consideration Was Not Given to the Benefits Inuring to the Patient and Liable Relatives.**

The Court failed to properly recognize the personal benefits to the individual patient and his or her family for the custody, care, and treatment of patients in state mental institutions. Such personal benefits have been recognized by many courts as the basis for upholding the imposition of individual financial liability. The protection afforded society by the commitment of certain mentally ill persons does not override nor detract from the attendant benefits inuring to the patient and his immediate family. *Beach v. District of Columbia*, *supra*; *Commission in Lunacy v. Eldridge*, *supra*; *Estate of Yturburru*, *supra*; *In Re Idleman's Estate*, *supra*; *State v. Bateman*, *supra*; *Bon Homme County v. Berndt*, 15 S. D. 494, 90 N.W. 147; *Kough v. Hoehler*, 143 Ill. 409, 109 N.E. (2d) 177. The conclusion of the courts in these cases is supported by medical and sociological studies, some of which are set forth in the brief of the Appellant.

**The Court Arbitrarily Found No Rational Basis for Classification.**

The California Supreme Court arbitrarily found no rational basis for such classification. For the court to say that a family relationship with its natural and moral obligations does not provide a rational basis for classification is inconsistent with the prevailing view that state statutes in equal protection cases should be interpreted insofar as possible to be predicated upon legitimate legislative considerations. *Ferguson v. Skrupa*, 372 U.S. 726.

The burden of support imposed upon an adult child, spouse or parent for the care and treatment of a mentally ill parent, spouse or child, adult or minor, may be premised upon obligations arising out of the common law. This is supported in the argument by the Appellant. Even if such obligations are not recognized by this Court as derivative from the common law, a person has no vested interest in a particular rule of common law. *Truax v. Corrigan*, 257 U.S. 312. The legislature could therefore impose a legal duty upon an otherwise imperfect moral obligation as long as such duty is reasonable and equally applied to all persons within the class. The state has the power to determine how far and to whom the state's so-called "charity" shall be extended. *In Re Idleman's Commitment*, *supra*; *In Re Yturburru's Estate*, *supra*; *Rice, Guardian v. State of Ohio*, *supra*. The state can decide whether to extend its charity to those who are able, themselves or through their own estates, or through responsible relatives, to support themselves. The distinction between the financially helpless and those able to help themselves is a natural and reasonable one. Such distinction is basically at the foundation of the "ability to pay" philosophy which pervades our whole governmental system in so many ways. The benefits received by the patient and family and the close family relationship of a child to a parent establish sufficient bases upon which the State of California could impose financial responsibility upon adult children for the cost of the care of a mentally ill parent in a state mental institution. The California legislature in the exercise of its powers to enact the pay-patient statutes met the constitutional tests under the equal protection clause of the United States Constitution to sustain the validity of these statutes herein challenged.

The State of Ohio therefore adopts and joins in the argument of the Department of Mental Hygiene of the State of California for the reversal of the opinion of the Supreme Court of California.

Respectfully submitted,

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# In the Supreme Court of the United States

OCTOBER TERM, 1963

NO. [REDACTED] 111

DEPARTMENT OF MENTAL HYGIENE OF THE  
STATE OF CALIFORNIA,

Petitioner,

vs.

EVELYN KIRSCHNER, Administratrix of the Estate of  
ELLINOR GREEN VANCE,

Respondent.

On Writ of Certiorari to the Supreme Court of the  
State of California

BRIEF FOR THE STATE OF OREGON  
AS AMICUS CURIAE

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# In the Supreme Court of the United States

OCTOBER TERM, 1963

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NO. 1141

DEPARTMENT OF MENTAL HYGIENE OF THE  
STATE OF CALIFORNIA,

Petitioner,

vs.

EVELYN KIRSCHNER, Administratrix of the Estate of  
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Respondent.

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On Writ of Certiorari to the Supreme Court of the  
State of California

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## BRIEF FOR THE STATE OF OREGON AS AMICUS CURIAE

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### THE INTEREST OF THE STATE OF OREGON

The State of Oregon supports the position of the State of California in the instant case. We concur with the authorities cited by the State of California in support of general propositions of law. In the interest of brevity we avoid duplication of citations to jurisdictions other than the State of Oregon. We present here authorities expressing decisions, interpretations and constructions in our jurisdiction relating to issues pertinent to the instant case.

Liability for the care, support and maintenance of a person in a state institution is imposed upon a class of persons composed of certain near relatives of the inmate. (Sec. 6650, California Welfare and Institutions Code—App. A). The Supreme Court of the State of California held this statute to be in violation of the Fourteenth Amendment of the United States Constitution. It held that the liability imposed was a species of taxation (Cal. Op. 8) and that there was no rational basis to support the separate classification for taxation based upon close family relationship. Writ of Certiorari upon these issues has been granted by this Court.

The State of Oregon has statutes (Oregon Revised Statutes 179.630 and 179.640) similar in language and identical in principle to the California statute in question. The validity of the Oregon statutes is in jeopardy until this Court determines whether the Equal Protection Clause denies state legislatures the power to define family responsibilities. Denial of this power would seriously impair the fiscal stability of the Oregon program for the care of the mentally ill by eliminating revenue of approximately \$2,500,000 annually.

Also, the State of Oregon has statutes imposing responsibility, within reasonable standards of financial ability, upon a similar class of persons to reimburse the state for public assistance furnished to a relative within the class. Denial of power in the state legislature to define family responsibilities in this area could create multitudinous litigation which could deprive the State of Oregon of nearly a million dollars annually. The de-

terrent effect of relative responsibility in keeping recipients off welfare rolls is inestimable.

## ARGUMENT

### THE STATUTES CODIFY THE COMMON LAW RECIPROCAL DUTY OF FAMILY SUPPORT.

The common law of the State of Oregon consists of the common law of England and English statutory amendments thereto prior to the Revolution. *Peery v. Fletcher*, 93 Or. 43, 172 P. 143; Oregon Constitution, Article XVIII, Sec. 7. (App. A) Reciprocal duties of family support were first codified in 43 Elizabeth, Chapter 2, Section 7. This duty of support remained a part of the common law of the Territory of Oregon and was expressed in Statutes of Oregon, 1854, page 360, reading as follows:

"Of Parents and Children. Chapter I. (1) Be it enacted by the legislative assembly of the Territory of Oregon, that parents shall be bound to maintain their children when poor and unable to work themselves, and children shall be bound to maintain their parents in the like circumstances."

The principle of this early statute is now expressed in Oregon Revised Statutes 109.010 (App. A) and is the basis for the legislative classification for liability of relatives contained in Oregon Revised Statutes 179.630 and 179.640 (App. A). It is submitted that these statutes do not create a tax or impose any additional burden upon relatives which did not theretofore exist under the common law of the State of Oregon.

STATUTORY CLASSIFICATION OF CLOSE FAMILY RESPONSIBILITY IS REASONABLE, JUSTIFIED AND IN THE PUBLIC INTEREST.

The Legislature has chosen the class, close relatives meeting reasonable standards of financial ability, to meet their moral, common law and statutory duty to contribute toward the care, maintenance and support of members of their immediate family needing institutionalized treatment and care. While it may seem that this choice might place upon this class a burden not borne on an entirely equal basis by others not included therein, such a result does not effect a constitutional condemnation of a classification which is based upon a real and substantial difference between classes. *Namba et al. v. McCourt and Neuner*, 185 Or. 579, 612, 204 P.2d 569 (1949); *Sproul et al. v. State Tax Commission et al.* 234 Or. 579, 383 P.2d 754 (1963). Only if a classification is arbitrary, unreasonable, without rational basis, or is wholly lacking in valid public considerations for distinguishing between classes, is it interdicted by the "equal protection" clause of the Federal Constitution, as well as by the "equal privileges and immunities" clause of the Oregon Constitution, the tests for measurement of its validity being the same in each case. *Savage v. Martin*, 161 Or. 660, 91 P.2d 273 (1939); *Phillips v. City of Bend*, 192 Or. 143, 234 P.2d 572 (1951); *State of Oregon v. Pirkey*, 203 Or. 697, 281 P.2d 698 (1955). Only in those cases in which the classification is palpably arbitrary or clearly unreasonable will it be deemed unconstitutional because the requirement of equal protec-

tion is not a "pedagogical requirement of the impracticable" which commands that a classification be made with mathematical nicety or absolute equality. *Mallatt v. Luhn et al.*, 206 Or. 678, 702, 294 P.2d 871 (1956); *Plummer v. Donald M. Drake Company*, 212 Or. 430, 320 P.2d 245 (1958); *Sproul et al. v. State Tax Commission et al.*, 234 Or. 579; 383 P.2d 754 (1963).

In *Nilsen v. Davidson Industries, Inc., et al.*, 226 Or. 164, 360 P.2d 307 (1961), the Supreme Court of Oregon states as follows:

"Classification is primarily a legislative problem and the courts have no authority to interfere with the legislative determination as long as it is based upon some real and substantial distinction having a just relation to the object in view. *Mallinckrodt Works v. St. Louis*, 238 US 41, 55, 59 LE 1192, 35 SC 671. Article I, Section 20 of the state constitution is the counterpart of the 'equal protection of the laws' clause of the Fourteenth Amendment of the Constitution of the United States. *State v. Savage*, 96 Or. 53, 59, 184 P. 567, 189 P. 427. In *Mallatt v. Luhn et al.*, 206 Or. 678, 702, 294 P.2d 871, we said that \* \* \* a classification having some reasonable basis does not offend against the Federal Constitution or the constitution of this state merely because it is not made with mathematical nicety or because in practice it results in some inequality".

Membership in a family entitles an individual to privileges of association, companionship, love and affection. Such membership also imposes obligations of protection, support, care and maintenance. These correlative and reciprocal privileges and duties are fundamental factors in establishing the family as the unit of our society and civilization. The instant decision of the California Su-



preme Court is in error in holding that classification of the family unit "has no rational basis" to support the distinction between classes.

It is submitted that the classification in issue is not arbitrary but reasonable, that it is founded upon logical and rational bases, and that valid public interests and considerations distinguish the class of close family responsibility recognized morally and legally. Taxpayers generally should not be compelled to assume the burden of supporting needy or institutionalized persons having their own financially responsible close relatives.

**DOCTRINE OF "PARENS PATRIAE" SUPPLEMENTS BUT DOES NOT SUPERSEDE RELATIVE RESPONSIBILITY, COMMON LAW OR STATUTORY.**

"Parens patriae" doctrine has been defined in *McIntosh v. Dill*, 205 P. 917, 86 Okl. 1, 31 Words and Phrases, page 99:

"The doctrine of 'parens patriae' is the inherent power and authority of a Legislature to provide protection of the person and property of persons non sui juris, such as minors, insane and incompetent persons."

It has been established that certain immediate relatives have a common law and statutory reciprocal duty of support. The state, in providing support for needy and institutionalized persons, performs its duty under this doctrine if the immediate relatives have failed or are unable to fully perform their duties in this respect. The relatives are not relieved of their duties to support by the state's performance under the "parens patriae" doctrine.

## **CONCLUSION**

Statutory classification by the legislature of the husband, wife, father, mother and children, as a class and within reasonable standards of financial ability, to reimburse the state for reciprocal support when needy or institutionalized, is reasonable, is in the public interest and is not in violation of the Fourteenth Amendment of the United States Constitution.

For the reasons stated, it is respectfully submitted that the judgment of the Supreme Court of the State of California should be reversed.

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**APPENDIX A****PERTINENT STATUTORY PROVISIONS**

Oregon Revised Statutes 109.010

**Duty of Support.** Parents are bound to maintain their children who are poor and unable to work to maintain themselves; and children are bound to maintain their parents in like circumstances.

Oregon Revised Statutes 179.630

**Relatives' liability for payment.** (1) Relatives of a person at a state institution are liable for the care and maintenance of such person under ORS 179.620, according to their respective abilities to pay, as follows:

- (a) The husband for the wife.
- (b) The wife for the husband.
- (c) The parents for their children.
- (d) The children for their parents.

(2) No liability for the support of a person at a state institution shall be imposed under the provisions of ORS 179.610 to 179.770 upon that person's child if, for a period amounting to 25 percent of the minority of the child, such person wilfully deserted or abandoned the child, or, by expulsion or cruelty, drove the child from the parental home, or, without good cause, was responsible for the child's being "dependent" as defined by ORS 418.205.

(3) If a circuit court of this state imposes liability upon a relative for the support of any person at a state institution, and fixes the amount thereof, the amount so fixed shall be prima facie evidence of the maximum limit of the relative's ability to pay under the provisions of ORS 179.610 to 179.770.

Oregon Revised Statutes 179.640

**Determination of ability to pay.** (1) At the time of admission of a person to a state institution, the Board of Control shall determine whether or not the person at the state institution or his estate or responsible relatives are financially able to pay for the care and maintenance of such person at the state institution as required by ORS 179.610 to 179.770. If the board determines at the time of admission or at some later time while the person remains at the state institution that such person, his estate or responsible relatives are able to pay, in whole or in part, for the care and maintenance of such person at the state institution, the board shall make its order against the proper persons or estate found responsible, fixing the extent of the liability. Thereafter, from time to time while the person remains in the state institution, the board shall modify its order to recognize a change in the ability of the persons to pay as specified in the order of the board; but, in any case where a court order has been made, the court order may be modified only as provided in QRS 179.650 and 179.680.

(2) In any case where the person is discharged from the institution before the determination of the extent of liability can be made by the board, the board may make its determination after the person's discharge. However, the determination shall be based on the ability to pay of the person, his estate or his responsible relatives during the time the person was in the institution.

(3) If the board is unable to determine to its satisfaction whether or not the person at the state institution,

his estate or responsible relatives are financially able to and will contribute towards the care and maintenance of such person, the board may request a court determination of the question in the manner provided in subsection (4) of this section. If any person against whom the board has made an order under subsection (1) of this section desires to obtain a court review of the determination of the board, he shall proceed in the manner provided in subsection (4) of this section.

(4) (a) Subject to paragraphs (b) and (c) of this subsection, upon request of the board or the person against whom the board order was made, the probate court of the county from which the person was committed or the probate court of the county of which such person was a resident when admitted to the state institution or the probate court of the county in which the responsible person resides shall cause a citation to be issued by the clerk of the court and served by the sheriff of the county, citing the person at the state institution and any guardian, husband, wife, parents and children of such person to appear in court before such judge at a time and place designated in the citation and show cause why a court order should not be entered adjudging that the person or his estate or responsible relatives, or any combination of them, are financially able to pay for the care and maintenance of such person at the state institution.

(b) Notwithstanding any other provision of this section, if the person at the state institution was committed to the state institution, the probate court for the county

where the commitment was made has exclusive jurisdiction under this section.

(c) Subject to paragraph (b) of this subsection, if two or more courts are entitled to exercise jurisdiction under this section, the court first taking jurisdiction shall retain jurisdiction to the exclusion of every other court.

(5) The court may direct subpoenas to be issued to any witness to appear and adduce evidence upon the trial of the matter for the purpose of determining the financial ability of the person at the state institution, his estate or his responsible relatives to pay. If a person is in a state institution for the mentally ill or mentally defective and does not have a guardian and it is necessary that he have a guardian for the purposes of the proceeding, the court shall appoint some competent, disinterested person, at the expense of the county, as guardian ad litem to appear for and who shall have full authority to represent such person. All such persons shall be examined as witnesses under oath for the purpose of determining the financial ability of the person at the state institution, his estate or responsible relatives, to pay for his care and maintenance in the state institution.

(6) Findings of fact shall be made by the court as to the ability to pay for such care and maintenance as provided in this section and an order entered against the proper persons or estate found responsible, fixing the extent of the liability.



## **California Welfare and Institutions Code**

### **Article 5. Property and Support of Patients**

6650. The husband, wife, father, mother, or children of a mentally ill person or inebriate, the estates of such persons, and the guardian and administrator of the estate of such mentally ill person or inebriate, shall cause him to be properly and suitably cared for and maintained, and shall pay the costs and charges of his transportation to a state institution for the mentally ill or inebriates. The husband, wife, father, mother, or children of a mentally ill person or inebriate, and the administrators of their estates, and the estate of such mentally ill person or inebriate, shall be liable for his care, support, and maintenance in a state institution of which he is an inmate. The liability of such persons and estates shall be a joint and several liability and such liability shall exist whether the mentally ill person or inebriate has become an inmate of a state institution pursuant to the provisions of this code or pursuant to the provisions of Sections 1026, 1368, 1369, 1370, and 1372 of the Penal Code.

(Amended by Stats. 1941, Ch. 916, by Stats. 1943, Ch. 1052, by Stats. 1945, Ch. 247, and by Stats. 1947, Ch. 625)

## **CONSTITUTION OF OREGON**

### **Article I, Section 20**

**Equality of privileges and immunities of citizens.** No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens.

### **Article XVIII, Section 7**

**Former Laws continued in force.** All laws in force in the Territory of Oregon when this Constitution takes effect, and consistent therewith, shall continue in force until altered, or repealed.

## **CONSTITUTION OF THE UNITED STATES**

### **Amendment XIV**

**Section 1. Citizenship; privileges and immunities; due process, equal protection.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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EVELYN KIRCHNER, ADMINISTRATRIX OF THE ES-  
TATE OF ELLINOR GREEN VANCE,

*Respondent.*

## **BRIEF FOR THE STATE OF ILLINOIS AMICUS CURIAE**

On Writ of Certiorari to the Supreme Court  
of the State of California

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**BRIEF FOR THE STATE OF ILLINOIS  
AMICUS CURIAE**

---

**On Writ of Certiorari to the Supreme Court  
of the State of California**

---

**Interest of the Amicus**

The State of Illinois has led the country in the develop-  
ment of a humane and effective mental health program. A  
part of that program involves a secondary and reciprocal  
obligation of parents, children, and spouses for a modest  
part of the cost of care in mental health facilities of the state.  
The decision below suggests doubt concerning the validity  
of this important aspect of the Illinois program.

## OPINION BELOW

The opinion of the Supreme Court of California is reported at 60 A. C. 704, 388 p. 2d 720, 36 Cal. Rptr. 488 (1964)

### Preliminary Statement

Respondent refused payment of sums due the state under the California mental health code for care and treatment of respondent's mother in a state institution. The trial court gave judgment on the pleadings to the state. The District Court of Appeal affirmed. The Supreme Court of California reversed holding the repayment statute void for lack of equal protection, a ground raised by neither party. This Court granted certiorari to examine the equal protection question and the issue of due process arising from the refusal of the court below to permit argument on the question.

### The Statutes Involved

The pertinent parts of the California Welfare Institutions Code provide as follows:

§ 6650. **Liability for care.** The husband, wife, father, mother, or children of a mentally ill person or inebriate, the estates of such persons, and the guardian and administrator of the estate of such mentally ill person or inebriate, shall cause him to be properly and suitably cared for and maintained, and shall pay the costs and charges of his transportation to a state institution for the mentally ill or inebriates. The husband, wife, father, mother, or children of a mentally ill person or inebriate, and the administrators of their estates, and the estate of such mentally ill person or inebriate, shall be liable for his care, support, and maintenance in a state institution of which he is an inmate. The liability

of such persons and estates shall be a joint and several liability, and such liability shall exist whether the mentally ill person or inebriate has become an inmate of a state institution pursuant to the provisions of this code or pursuant to the provisions of Sections 1026, 1368, 1369, 1370, and 1372 of the Penal Code. (Stats. 1937, c. 369, p. 1155, § 6650, as amended Stats. 1941, c. 916, p. 2503, § 1; Stats. 1943, c. 1052, p. 2991, § 1; Stats. 1945, c. 247, p. 710, § 1; Stats. 1947, c. 625, p. 1632, § 1.)

**§ 6651. Fixing rate; reduction or cancellation of amount; refunds; claims against estate**

The rate for the care, support, and maintenance of all mentally ill persons and inebriates at the state hospitals for the mentally ill where there is liability to pay for such care, support, and maintenance, shall be reviewed each fiscal year and fixed at the statewide average per capita cost of maintaining patients in all state hospitals, as determined by the Director of Mental Hygiene. The rate thus fixed shall continue in effect until a new rate is fixed. The Director of Mental Hygiene may reduce, cancel or remit the amount to be paid by the estate or the relatives, as the case may be, liable for the care, support, and maintenance of any mentally ill person or inebriate who is a patient of a state hospital for the mentally ill, on satisfactory proof that the estate or relatives, as the case may be, are unable to pay the cost of such care, support, and maintenance or that the amount is uncollectible.

**The Question to Which this Brief is Addressed.**

The sole question to which this brief is addressed is the first issue which this Court has undertaken to consider, namely, whether the California repayment statutes are val-

id under the Equal Protection Clause of the 14th Amendment.

### Summary of Argument

I. The equal protection clause leaves wide latitude for legislative classification that is not patently invidious. Neither prudence nor precedent suggests any reason that the state may not make the public the beneficiary of a vicarious liability for services rendered so long as the person liable bears some relevant relationship to the person receiving services.

II. Unvarying precedent and common sense support the use of close family relationship as a basis for liability for state services. In any event the legislature could so conclude, and that possibility is sufficient to justify such a classification.

III. The California statute is not arbitrary in its assignment of liabilities, and if it were, the respondent has no standing to raise the issue in this Court.

IV. The great variety of statutory provisions in the different states makes it imperative that any judgment of this Court be focused upon the California statute only.

## ARGUMENT.

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### I.

#### THE EQUAL PROTECTION CLAUSE DOES NOT PROHIBIT ALL VICARIOUS LIABILITY FOR STATE SUPPLIED SERVICES.

The court below describes the issue before it as follows:

"... the basic question as to equal protection of the law in a case wherein it was sought to impose liability upon one person for the support of another in a state institution." *Department of Mental Hygiene v. Kirchner*, 60 Cal. 2d 716, 721, 388 P. 2d 720, 723 (1964).

Whether the court in fact decided this expansive issue is unclear. Certainly it was not necessary to the result. Details of the specific statute at issue were deemed offensive by the court, suggesting a narrower holding. Common criteria of interpretation support such a view. However, several unguarded passages of the opinion have placed in jeopardy all statutory schemes of whatever character which require reimbursement of the state by an individual for services rendered another. The immense implications of such a result urgently require analysis. Treated as a problem in reasonable classification, the proposition that no special relationship between two persons can justify a duty of contribution by one for state benefits extended to the other is at best unsettling.

It is conceded—indeed insisted—that constitutional adjudication of equal protection question is scarcely a scientific process. It is for this very reason that this Court has been unwilling to invade the state domain so long as there appears the merest fragment of justification for the legislative scheme or judicial practice at issue. The 14th Amend:

ment has not been seen as a guarantee that all men regardless of circumstances will be treated precisely alike. It is neither possible nor desirable to imagine such a proposition in any save a totalitarian society. What is demanded by the equal protection guarantee is only that the states draw distinctions between citizens upon a basis free of "invidious discrimination". *Willamson v. Lee Optical Co.*, 348 U. S. 483, 489 (1955). Race, of course, is not a basis. *Burton v. Wilmington Parking Authority*, 365 U. S. 715 (1961). Poverty is not such a basis. *Griffin v. Illinois*, 351 U. S. 12 (1955). Voting domicile is not such a basis. *Reynolds v. Sims*, 377 U. S. 533 (1964)..

In these three areas the last decade has witnessed a healthy growth in the implementation of the equal protection clause. However, for very sound reasons, this expansion has been tied closely to the types of classification noted—race, poverty, voting domicile. Indeed, most of the decisions relied on by the court below involved statutes drawing distinctions based upon race or poverty. *Gyama v. California*, 332 U. S. 633 (1948); *Estate of Tetsubumi* 188 Cal. 645, 206 P. 995 (1922) (race); *Drihn v. Superior Court*, 37 Cal. 2d 345, 231 P. 2d 809 (1951) (poverty). Meanwhile, other forms of legislative and judicial classification have stood intact under the equal protection clause. The distinction between lawyers and non-lawyers for purposes of the right to engage in the business of "debt adjusting" was upheld. *Ferguson v. Skrupa*, 372 U. S. 726 (1963). Sustained also was the imposition of life sentences upon certain three-time criminal offenders despite the concomitant exemption of others guilty of crimes equal in number and of greater gravity. *Oyler v. Boles*, 368 U. S. 448 (1961). Sunday closing laws placing a special indirect burden upon Saturday Sabbatarians and Jews were uniformly upheld. See



*McGowan v. Maryland*, 366 U. S. 420 (1961) and related decisions of the same date. In *Williamson v. Lee Optical Co.*, *supra*, this Court upheld a very dubious classification of professions even though "The Oklahoma law may exact a needless, wasteful requirement in many cases. . . . it is for the legislature not the Courts, to balance the advantages and disadvantages" . . . *Id.* at 487.

Distinctions based upon race, poverty and voting domicile thus are quite separable for constitutional purposes from other forms of classification. These three categories involve starkly invidious distinctions upon the basis of which no right may be withheld or duty imposed. It would be too much to argue that no equal protection problems arise outside these areas, but, when they do, it is only with the greatest diffidence that the judiciary will reexamine legislative judgment.

In the court below the classification question permitted to dilate into dimensions grossly disproportionate to the issue. There may or may not be an equal protection question under the California Statute, but the solution of this question is not advanced by a general and unsupported attack on all repayment schemes. Rather, the Court in traditional fashion, should have examined the nature of the supporting relationship and its possible relevance to the legislative purpose. It might appropriately have asked whether this relationship is sufficiently proximate and significant that the legislature could suppose it to differ materially from the relationship borne to each other by members of the public. Could this specific social nexus chosen by the legislature in any way relate to or involve the duty—moral or legal—to perform the type of service performed by the state? How far in the way of justification will kinship carry the matter? How far marriage? On another day with another statute

the court below may have to ask other and different questions. How far does employment or co-venture justify a repayment scheme? Is the appropriate boundary of legislative judgment to be perceived in relationships of fault, parenthood, and marriage; or may relationships of agency or employment, and their accompanying vicarious responsibilities also be included by rational legislators? The court may someday be asked whether the state or federal government constitutionally is precluded from insisting that corporate employers share the expense of care in state or federal hospitals for persons injured in the course of employment? But surely all this is not at issue in this case.

Penetration of such questions is not advanced by an inflexible approach to the classification question. What is needed is a careful appraisal of what the legislature might have considered the realities of each program and of the supporting relation of the individuals involved. That necessity has been ignored in this case. To object out of hand to the inclusion of third cousins in a repayment scheme would seem intelligible; but to grandly sweep aside on the basis of an unsupported aphorism all legislative programs of repayment founded upon the intimate and immediate interspousal or parental relationship itself constitutes an arbitrary exercise of judicial power. As we shall elaborate in Part II, until the *Kirchner* case, no court among the many which had considered the matter had held the slightest doubt concerning the efficacy of the familial bond to support repayment programs of the kind at issue here. (See cases cited *infra*, p. 9)

Finally, to enlarge the grasp of the equal protection clause in this manner is not merely unwise. It is also substantially unintelligible. The California court has ventured far past the boundary of the patently invidious classification, but it offers no new limits. It has adopted the ad hoc reappraisal

of the legislative wisdom as its standard of review. In so doing it has stripped the law of its predictive value. The opinion is a work of profound inscrutability accompanied by no rationale and totally resistant to intelligent generalization. Its future course is as opaque as its origins. A fiat of such indefinite quality is a radical perversion of the spirit and letter of the equal protection clause and should be so treated by this Court.

It has not been demonstrated by the court below that the public is constitutionally unfit to stand as beneficiary of a vicarious liability for services rendered.

## II.

### **THE IMPOSITION OF A FAMILIAL RESPONSIBILITY FOR STATE SUPPLIED MENTAL HEALTH SERVICES DOES NOT CONSTITUTE AN ARBITRARY CLASSIFICATION.**

The familial relation is in itself a benign and useful one and may form the basis for statutory classification. Until the present case no court had presumed to reweigh a family-based classification of duties in a repayment plan except to pronounce it well within the legislative prerogative. Indeed all judicial expression to date has actively praised the wisdom of legislation of the kind at issue here. *Kough v. Hoehler*, 413 Ill. 409, 109 N. E. 2d 177 (1956); *People v. Hill*, 163 Ill. 186, 46 N. E. 796 (1896); *State v. Bateman*, 110 Kan. 546, 204 P. 682 (1922); *State v. Webber*, 163 Ohio St. 598, 128 N. E. 2d (1955); *In re Idelman*, 146 Ore. 13, 27 P. 2d 305 (1933); *In re Mansley's Estate*, 253 Pa. 522, 98 A. 702 (1916). If the puzzling holding before this Court becomes the law, the unwavering testimony of these and other courts becomes error and the settled legislative programs of 43

states are in jeopardy. (See Petition for Certiorari, app. C).

The requirement of familial responsibility to the state for services to the family is not only widespread but venerable. These obligations grew out of a general duty of care and support springing from statutes and common law of ancient vintage. From 1601, the Elizabethan poor laws imposed certain reciprocal duties of support on children, parents and grandparents. This statutory duty made unnecessary, in England, the development of comprehensive common law rights of care and support, though the husband, in fact, had such duty with respect to necessities for the wife, including medical care. *Harris v. Lee*, 1 P Wms. 482 (1718). In this country, the duty was extended widely by the courts to include the support of minor children. See Madden, *Domestic Relations*, p. 384-5 and numerous citations therein. The establishment of comprehensive reciprocal liabilities for support among all first-degree kin was completed by the legislatures in the 19th and 20th Centuries.

Thus, by virtue of an unbroken common law and statutory development, the reciprocal responsibilities of spouses, children and parents have emerged in a nearly universal pattern. It is these obligations based upon kinship that have been enforced indirectly through the offices of the state under the welfare and mental health programs. The California statute is no exotic sport to be given a wary judicial reception. It is typical Americana in the mainstream of our social life. It represents a pattern to which our people and institutions have long been attuned.

The universality and persistence of such laws go a good distance toward their justification. It is profoundly quixotic to label them as arbitrary. Yet an even more fundamental and positive defense of such legislation can be cast in terms

of its institutional roots and functional value. The taproot of the California statute lies deep in the soil of the family.

Section 6650 is a response to the healthy political doctrine that, when feasible, it is wise to place the legal responsibility where the moral and social responsibility already resides. That obligation here stands first of all upon the familial relationship.

The reciprocal intra-family obligations for support imbedded in the "poor laws" are themselves testimony to the underlying obligation. Convenience, no doubt, played its proper part in the framing of these statutory duties. Yet, convenience is but a function of the underlying relationship. It would not have seemed expedient for the law to saddle remote relatives or strangers with reciprocal statutory obligations, even though their physical proximity or financial ability might exceed that of family members. The responsibility for support is intelligible only as an attachment to a preexisting family relationship that is sometimes undistinguished for convenience and will endure quite apart from that quality.

So the family bond supports the statute, and that, it would seem, is enough for the Constitution; but the statute also supports the family bond and that is even better. It might appear cheap irony to argue that the family of respondent's testatrix will be better off if she loses the instant case. However, the legislature could surely find that the duties involved can be blessings to the family as an institution. The positive benefits to the family from the obligation to repay the state for medical care are at least these three:

- (1). *A reinforcement of Family Integrity.* The statutory duty of partial repayment within the means of the individual is itself a confirmation of the familial bond. It restates objectively the moral union of spouses, parents, and

children. Responsibility for the relative is part and parcel of concern for that relative; the erosion of that responsibility is the hallmark of family disintegration and indifference. The decisions of the California court suggests a view of the family bond as having no greater significance in that state than a mere general bond of human brotherhood. Without criticizing such a view it must be asked whether it is a view so palpably correct that the legislature cannot constitutionally disagree. It surely is a view not shared by her sister states. To imbed this local variation in the national law through the medium of the Fourteenth Amendment is a work of doubtful statesmanship.

(2). *A Protection of the Unwanted.* It would be strange policy to maximize a family's incentives to institutionalize its less popular members. This, however, is precisely the effect of the California court's decision. Every human weakness is now arrayed in support of commitment. If it were the very purpose of the court below to stack the cards against the old, the querulous, and the eccentric, no more potent mechanism could be found than the judgment below. The court has invited those who are inconvenienced or embarrassed by an aging parent to let the state carry not only the emotional burden of the embarrassment but the financial burden as well. It is a policy which will bear evil fruit. Even granting that some will be encouraged to seek needed treatment that might otherwise have been neglected, the legislature clearly has the right to conclude that the dangers outweigh the potential gain. It is difficult enough to maintain a respectable observance of civil liberties in commitment proceedings where the parties all preserve an attitude of disinterested concern. The *Kirchner* case magnifies these difficulties. The court below would award the family a bonus for its successful subversion of those liberties.



Further, even setting aside the dangers of wrongful commitment, without a limited payment scheme the legislature is quite entitled to fear a significant increase in commitments of persons who formerly would have been maintained better within the family. To assert that a man may lawfully be committed is not to say that he should be. The therapy of home and family is often the finest medicine. Indeed, a good share of the new and brilliant mental health program of Illinois—now being copied in many states—is founded upon the purpose and policy of keeping patients proximate to their homes in the name of intelligent and modern therapy. Dependence upon state institutions can be literally bad medicine. The financial incentive offered by the court below will provide the push necessary to induce many a family to jettison its kin upon the broad bosom of the omniscient state. In terms of therapy alone, it is a backward step.

If none of this gloomy prognosis were convincing to this Court, it is at least a legitimate concern of the legislature. That, under the Fourteenth Amendment, is quite enough to justify the statute.

(3). *Preservation of Flexibility in Choice of Care.* The family which is legally responsible for the care of its members, will necessarily consider modes of care other than those offered by the state. The family is often in the best position to judge which care is desirable—or, at least which kind of institution should be tried first. Unless one is to conclude that state care is inevitably superior or that the family should have no voice in the matter, this flexibility is desirable. However, the option is practically eliminated for all but the wealthy by the decision below.

There are at least two other policy considerations of a quite different character supporting this legislation. The first is the preservation and encouragement of independent

medical institutions. The decision below, as we have just noted, tends to encourage state monopoly and the submergence or total control of private treatment institutions. The barest appreciation of the catalytic role of such free institutions in the progress of medicine suggests the unwisdom of any policy which must sap either their economic vitality or their independence.

The final point in justification of the statute is grounded in the benefits accruing to the entire family from the state services. The court below obscures the point in its mystical reification of the state as parents patriae, but the raw fact is that the family qua family benefits from the care bestowed upon its members. The health or no of each individual is of vital material and social concern to all members of most families. The care which protects that health or restores it is care which, as we have seen, is a legal duty of these very individuals. Consider the benefits—material and otherwise—which accrue to the family from the care and restoration of a wife and mother. The value of affection, companionship, guidance, and education is difficult to calculate in money, but is not the less real. The value of housekeeping, cooking, washing, and the infinity of other services for the family performed by a housewife is measurable in money, and that measure is not insignificant. The suggestion that these benefits accrue primarily to the society at large is a fantasy. To learn that a stranger in another town has returned from an institution restored may be agreeable to anyone. For the family members involved it is an experience central to their personal and corporate lives. The California legislature perceived that difference. It is not irrational that it used it.

Nothing in *Hoepfer v. Tax Commission*, 284 U. S. 206 (1931) conflicts with these views. The reliance of the court

below upon the *Hoeper* case is misplaced. The quotation from the opinion of Justice Roberts that "The State is forbidden to deny due process or *the equal protection of the laws for any purpose whatsoever*" (Italics by the court below) really only poses in another form the question at issue here. We should note also that there are actually the words of Justice McReynolds in *Schlesinger v. Wisconsin*, 270 U. S. 230, 240 (1926) on a totally different matter. They are merely quoted by Justice Roberts in the *Hoeper* opinion. 284 U. S. at 217. In fact the *Hoeper* case does not even depend upon the equal protection clause for its holding that "The exaction is arbitrary and is a denial of due process." *Id.* at 218.

The matter at issue in the *Hoeper* case was a graduated state income tax measuring a married taxpayer's income by the combined total income of his wife and himself. The Supreme Court invalidated the tax. Justice Holmes dissented joined by Justices Brandeis and Stone. The decision did not, of course, reject the husband-wife relationship as a basis for statutory classification. Furthermore, the *Hoeper* holdings even if taken to involve equal protection has surely been interred by this Court's opinion in *Fernandez v. Wiener*, 326 U. S. 340 (1945). There the Federal Estate Tax was under attack insofar as it valued the decedents' estate by the inclusion of the entire marital estate in a community property jurisdiction. The tax was upheld in a unanimous judgment, the Court stating:

"There can be no doubt that the selection of such a class for taxation would not offend against the Fifth Amendment, or even the Fourteenth . . . Considerations of practical administrative convenience and cost in the administration of tax laws afford adequate grounds for imposing a tax on a well recognized and defined class. . . . Appellees' contention that the uniformity clause

precludes such classification would in effect add to the constitutional restraints upon Congress an equal protection clause more restrictive than that of the Fourteenth Amendment, and is without judicial or historical support. *Id.* at 360-1.

Mr. Justice Douglas, concurring, remarked concerning the *Hoeper* case,

"... I can see no reason why that which is in fact an economic unit may not be treated as one by law." *Id.* at 365.

The *Hoeper* case is at best moribund, but is also irrelevant. It is one thing to object to such classification for purposes of a tax designed solely for the public weal. It is quite another when the "economic unit"—the family—is a prime beneficiary of the state action.

Finally, in this case, as in any examination of legislation, the court ordinarily should ask whether any of the weaknesses it perceives in the statute could be remedied better by judicial intervention or legislative reform. Is new legislation a realistic possibility or is the affected class fundamentally dependent upon the judiciary for change? Tested by such a standard the court below has overreached. The matter at issue is a profoundly and uniquely political question necessitating particularistic political answers in each state. The respondent is not a member of a disenfranchised minority, as in the race or poverty cases, nor even of a disenfranchised majority as in the reapportionment cases. By the very statutory definition at stake the respondent represents an immensely significant political group both in numbers and also in financial means. There is no historic pattern of legislative frustration in this area nor any other reason to suppose that the legislatures are impervious to persuasion through the normal political process. In such a posture judicial intervention is an unwieldy and

unfortunate expedient *supra*: As this Court announced in *Ferguson v. Skrupa*,

"... The Kansas debt adjusting statute may be wise or unwise. But relief, if any be needed, lies not with us but with the body constituted to pass laws for the State of Kansas." 372 U. S. at 732.

### III.

#### **THE PARTICULARITIES OF THE CALIFORNIA STATUTE ARE INOFFENSIVE TO THE EQUAL PROTECTION CLAUSE.**

Much of the foregoing is unnecessary if the holding of the court below is to be taken as limited to the peculiarities of the California legislation. Hopefully such is the case, and it is quite possible to read the opinion as a criticism of the administrative scheme of the statute rather than the classification of responsible individuals already discussed above. Specific objections of the court below lend support to this interpretation. These objections appear to fall in three categories:

(1) the alleged absence of a means test; (2) the alleged absence of a right of contribution against the estate; and (3) administrative discretion of the Director of Mental Hygiene.

(1) *The question of the means test.* The court below complains that the relatives may be "denuded" by the statutory impositions. Despite the language of Sec. 6651 relating to cases where "... the estate or relatives ... are unable to pay ..." the court declares the liability to be "absolute". Apparently this means that each relative, or all of them, may be totally divested of every possession in order to satisfy the liability. This curious interpretation

of legislative intent in fact has some support. In 1958 the California Supreme Court decided substantially the same kind of issues in *Dep't of Mental Hygiene v. Mc Gilvery*, 50 Cal. 2d 742, 329 P. 2d 689. There the court held that "... references to ability to pay in such provisions are a condition only to collectibility ..." 50 Cal. 2d at 756: 329 P 2d at 696.

It would ordinarily constitute the rankest presumption for an amicus brief to disagree with a state supreme court on its own law. However, in the line of cases involving the immediate question, a part of the statute has been consistently overlooked which renders the court's interpretation quite impossible. Note the function of the word "remit" in the following sentence from Sec. 6651:

"The Director of Mental Hygiene may reduce, cancel or remit the amount to be paid by the estate or the relatives ... on satisfactory proof that the estate or relatives ... are unable to pay the cost of such care, support, and maintenance. ..." (Ital. supplied)

Payment by the patient or relatives may be made in advance. It is in the case of such an advance payment that there will be a duty of the state to remit under Sec. 6651. To put the matter very simply — If the statute authorized the state to "denude" the relatives, there would be no point in remitting anything. That the language of Sec. 6651 was intended to incorporate a means test is clear beyond argument. But, that perhaps, is the difficulty — it has never been argued.

This error in the *Kirchner* opinion is doubly perplexing, since the California legislature made an effort to correct the error after its appearance in the *Mc Gilvery* decision in 1958. The legislature added to the end of the sentence quoted above the words, "or that the amount is uncollec-



tible" to distinguish such a case of uncollectibility from a case of inability to pay. Sec. 6651 as amended Stats. 1959, c. 186, p. 2081, Sec. 1; Stats. 1961, c. 176, p. 1181, Sec. 1. The California Supreme Court unfortunately showed no awareness of that change in the opinion below.

This strange error leaves the matter in a curious posture. If the objection to the absence of a means test is to be taken seriously as an equal protection question, this court may face the unique instance of an obvious error in state law which creates rather than avoids the federal question. Although the decision of the highest court of the state is ordinarily final on questions of state law, this is not true where the nonfederal ground is clearly untenable and would, if adopted, frustrate fundamental constitutional protections. "To hold otherwise would open an easy method of avoiding the jurisdiction of this court". Holmes, J. in *Terre Haute &c. Railroad Co. v. Indiana*, 194 U.S. 579, 589 (1904). The state holding should be no more conclusive where the effect of the obvious error is to raise rather than avoid the federal question. It may well be that in such a case this Court would prefer to return the issue for reconsideration by the state tribunal. Whatever course is followed, this Court should not be bound by an utterly insupportable view of the state law.

There is also here a question of standing. Whether or not a means test is required by the statute, the administration has in fact applied one (Pet. for rehearing, p. 30). The respondent's argument is thus theoretical. She must show not the hypothetical effect of a statute that is never applied, but the actual effect of the administrative practice. Until she has done so, there is no injury and no standing in this Court. *Doremus v. Board of Education*, 342 U.S. 429 (1952).

(2) *The question of the rights of contribution.* The statutes explicitly provide for the right of contribution among the persons liable under § 6650. This Court below is unfortunately not accurate in its statement on this point, which reads as follows:

Section 6650 . . . does not even purport to vest in the servient relatives any right of control over, or to recoup from, the assets of the patient. 60 Cal. 2d at 722; 388 P 2d at 724.

Section 6650 in fact declares the liability of the patient and relatives to be "... a joint and several liability." Section 1432 of the California Civil Code declares the right of contribution as follows:

"... A party to a joint, or joint and several obligation, who satisfies more than his share of the claim against all, may require a proportionate contribution from all the parties joined with him."

Here then the same issue of the reviewability of an untenable holding on state law is presented.

However, even assuming there were no right of contribution, there is no standing to raise the question. At no point has respondent sought to exercise her right to contribution. She even failed to join the patients' estate as a party in the state action. The right has never been denied her. *Doremus v. Board of Education, supra.*

(3) *Administrative discretion of the Director of Mental Hygiene.* The objections to administrative discretion apparently are twofold: (1) The administrator may arbitrarily choose to collect from one of the relatives; (2) He may strip that relative of his possessions. In the light of the right of contribution and the requirement of ability to pay, these objections simply evaporate. Even accepting them at face value, however, it is clear that the administra-

tive action is subject to judicial review. Indeed the Director cannot collect without bringing a lawsuit. Such discretion is puny indeed.

It is all too clear that the court below inadvertently decided this case with reference to a hypothetical statute bearing little resemblance to the California Welfare and Institutions Code. This code, as it stands, may be an enlightened piece of legislation or of dubious merit — observers may differ. Under either view it deserves another and hopefully closer look before it is treated as having “no rational basis.”

#### IV.

#### **THE VARIETY OF STATUTORY DEVICES ADOPTED BY THE STATES SUGGESTS THE NECESSITY OF A HOLDING CLEARLY LIMITED TO THE CALIFORNIA STATUTE.**

The<sup>a</sup> statutory provisions of the various repayment plans of other states face many of the same problems as the California law, but the solutions to these problems differ widely from the California scheme and from each other. Financial ability standards, rights of contribution, priorities among relatives, rights to administrative and judicial review, disposition of the proceeds, and other aspects of repayment plans vary from state to state.

The Illinois Mental Health Code of 1964 is an illustration of one state's way of handling these problems — a way different from the California system, but not on that ground either more or less successful. The repayment provisions of the Illinois Code are reproduced in Appendix A of this brief. 91½ Ill. Rev. Stat. §§ 12-21 to 12-27.

In summary, the Illinois code provides for a primary liability of the patient's own estate. The spouse, parents, or children (with certain exceptions — See § 12-21) are secondarily and equally liable up to a collective maximum of \$50 per month. The Department of Mental Health must make determinations of ability to pay and must recompute these findings periodically to reflect cost of living and other changing factors (12-23). Provision is made for intra-departmental petitions to review decisions and for further appeal to a statutory Board of Reimbursement Appeals (12-24). In addition, decisions of the Board are subject to judicial review under the Administrative Review Act (14-1). The sums collected under the payment program go principally into the Mental Health Fund of the State. The balance enters the Psychiatric Training and Research Fund (12-22).

The Illinois Department of Mental Health has adopted elaborate regulations to determine the ability of responsible members of the family to contribute to the patients' support. Some of these regulations are reproduced in Appendix B of this brief. At the present time it is anticipated that the repayment program will produce about 10% of the mental health budget. One-third of this 10% will come from relatives and two-thirds from the patients themselves.

The Illinois program like most or all of the programs of mental health has been carefully drafted to ensure fair procedure and avoidance of hardship. It should have its opportunity with other programs, to be measured against the requirements of the Constitution in an adversary proceeding commenced at the trial level.

**CONCLUSION.**

For the reasons stated, it is respectfully submitted that the judgment of the court below should be reversed.

Respectfully submitted,

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**APPENDIX A.**

Section 12-21. Each patient receiving treatment in a Mental Health program of the Department and the estate of such patient is liable for the payment of sums representing charges for treatment of such patient at a rate to be determined by the Department in accordance with the provisions of Section 12-22 of this Act. If such patient is unable to pay or if the estate of such patient is insufficient, the responsible relatives, are severally liable for the payment of such sums, or for the balance due in case less than the amount prescribed under this Act has been paid, provided that: the maximum treatment charges for each patient assessed against responsible relatives collectively shall not exceed \$50 per month; the liability of each responsible relative for payment of treatment charges shall cease when payments on the basis of financial ability have been made for a total of 12 years for any patient, and any portion of such 12-year period, during which a responsible relative has been determined by the Department to be financially unable to pay any treatment charges, shall be included in fixing the total period of liability; no child shall be liable under this Act for treatment of a parent who wilfully failed to contribute to the support of such child for a period of at least 5 years during his minority; and that no wife shall be liable under this Act for the treatment of a husband who wilfully failed to contribute to her support for a period of 5 years immediately preceding his hospitalization. Any child or wife claiming exemption because of such wilful failure to support during any such 5-year period shall be required to furnish the Department with clear and convincing evidence substantiating such claim.

Section 12-22. The rate at which the sums for the treatment of patients in a Mental Health program of the Department shall be calculated by the Department is the average per capita cost of the treatment of all such patients, such cost to be computed by the Department on the general average per capita cost of operation of all state hospitals for the mentally ill and the mentally retarded for the fiscal



year immediately preceding the period of state care for which the rate is being calculated, except the Department may, in its discretion, set the rate at a lesser amount than such average per capita cost. The Department in its rules and regulations may establish reasonable fees for treatment furnished to persons in Mental Health programs other than those involving residential care. Less or greater amounts may be accepted by the Department when conditions warrant such action or when offered by persons not liable under this Act. Three-fourths of the amounts so received shall be deposited with the State Treasurer and placed in the Mental Health Fund. The balance, not exceeding the sum of \$1,000,000 per fiscal year, shall be retained by the State Treasurer, ex officio, as trustee, in a Psychiatric Training and Research Fund outside the State Treasury and shall be expended for training of psychiatric personnel and for research in mental illness or mental retardation by the Psychiatric Training and Research Authority. If, at any time, the Psychiatric Training and Research Fund unallocated for pending research exceeds the sum of \$2,000,000, such excess of said fund shall be restored to the Mental Health Fund. When the amount retained by the Department in any one fiscal year in the Psychiatric Training and Research Fund equals \$1,000,000, all amounts collected thereafter for the remainder of that fiscal year shall be deposited with the State Treasurer and paid into the Mental Health Fund.

The Auditor General shall audit or cause to be audited all amounts collected by the Department and all expenditures from the Psychiatric Training and Research Fund. Disbursements from such fund shall be made as nearly as possible in the manner prescribed in Section 9 of "An Act in relation to State finance", approved June 10, 1919, as amended.

Section 12-23. The Department is authorized to investigate the financial condition of each person liable under this Act, and is further authorized to make determinations of the ability of each such person to pay sums representing treatment charges, and for such purposes to set a standard as a basis of judgment of ability to pay, which standard

shall be recomputed periodically to reflect changes in the cost of living and other pertinent factors, and to make provisions for unusual and exceptional circumstances in the application of such standard. The Department may issue to any of the persons liable under this Act, statements of sums due as treatment charges, requiring them to pay monthly, quarterly or otherwise as may be arranged, an amount not exceeding that required under Section 12-21, 12-22, and 12-27 of this Act, plus fees to which the Department may be entitled under Section 8-18 of this Act. Provided, that no admission or detention of a patient in a state hospital shall be limited or conditioned in any manner by the financial status or ability to pay of the patient, the estate of the patient, or any responsible relative of the patient.

Treatment charges assessed against responsible relatives shall be effective on the date of admission or acceptance of the patient for treatment or as soon thereafter as each responsible relative's financial ability during the period which the patient receives treatment subjects him to liability for charges as required under Sections 12-21, 12-22, and 12-27 of this Act. Payment in full by a responsible relative of established treatment charges as provided in Sections 12-21, 12-22, and 12-27 of this Act constitutes full discharge of the liability of such responsible relative, unless there has been material misrepresentation in revealing the extent of financial resources.

Section 12-24. Any person who has been issued a statement of sums due as treatment charges may within one year after such statement has been issued, petition the Department for a release from or modification of such statement, and the Department shall provide for hearings to be held on any such petition. The Department may, after such hearing, cancel, modify or increase such former statement. Furthermore, at any time for due cause the Department may increase the sums due for treatment charges to an amount not to exceed the maximum provided for such person by Sections 12-21 and 12-22 of this Act. Any person aggrieved by the decision of the Department upon such

hearing may, within 30 days thereafter, file a petition with the Department for review of such decision by the Board of Reimbursement Appeals. The Board of Reimbursement Appeals may approve action taken by the Department or may remand the case to the Director with recommendations for redetermination of charges.

A Board of Reimbursement Appeals, consisting of 3 persons appointed by the Governor, is created for the purpose of reviewing decisions of the Department under this Section. The members of such Board shall serve for terms of 3 years commencing January 1 of the year the appointment becomes effective and continuing until their successors are appointed and qualified except that the original members shall serve for terms of 1, 2 and 3 years, commencing January 1, 1964, as designated by the Governor at the time of appointment. Such members shall take and subscribe to the constitutional oath of office and file it with the Secretary of State. They shall receive no compensation but the Department shall reimburse them for expenses necessarily incurred in the performance of their duties. Persons appointed as members of such Board shall have no other connection or duties with the Department.

Upon receiving a petition for review under this Section the Department shall thereupon notify the Board of Reimbursement Appeals, which shall render its decision thereon within 30 days after the petition is filed and certify such decision to the Department. Concurrence of a majority of the Board is necessary in any such decision.

Section 12-25. Upon request of the Department, the State's Attorney of the county in which a responsible relative or a patient who is liable under this Act for payment of sums representing treatment charges resides shall institute appropriate legal action or proceedings against any such responsible relative, patient, or the conservator, guardian, administrator or executor of the estate of such patient who fails or refuses to pay the same. The court shall order the payment of sums due for treatment charges for such period or periods of time as the circumstances require, except that no responsible relative shall be held liable for

charges for treatment furnished to a patient if such charges were assessed more than 5 years prior to the time the action is filed; but such 5-year limitation shall not apply to the liability of a patient or the patient's estate. Such order may be entered against any or all of such defendants and may be based upon the proportionate ability of each defendant to contribute to the payment of sums representing treatment charges. Orders for the payment of money may be enforced by attachment as for contempt against the persons of the defendants, and in addition as other judgments at law, and costs may be adjudged against the defendants and apportioned among them.

The provisions of the "Civil Practice Act", approved June 23, 1933, and all amendments thereto shall apply to and govern all actions instituted under the provisions of this Section.

Section 12-26. Upon the death of a person who is or has been a patient of a state hospital, who is liable for treatment charges and who is possessed of property, it shall be the duty of the executor or administrator or anyone holding assets of the former patient to ascertain from the Department whether any payments were made for the sums due as treatment charges by the deceased person while a patient, and if not, the Department may present a claim for such sums, or for the balance due in case less than the rate prescribed under this Act has been paid. Such claim shall be allowed and paid as other lawful claims against the estate.

Section 12-27. In case any patient, the estate of any patient, or the responsible relatives of such patient shall be unable to pay the treatment charges for the patient provided for by this Act, then the cost of treatment of such patient shall be borne by the State, but the cost of clothing, transportation and other incidental expenses not constituting any part of the treatment shall be defrayed at the expense of the patient, or the estate of the patient, or the responsible relatives of the patient, or of the county of his residence, except that the county shall not be required to

defray expense of clothing; provided, that no child shall be liable under this Act for clothing, transportation, or other incidental expenses of a parent who wilfully failed to contribute to the support of such child for a period of at least 5 years during his minority; provided further, that no wife shall be liable under this Act for clothing, transportation or other incidental expenses of a husband who wilfully failed to contribute to her support for a period of 5 years immediately preceding the hospitalization.

**APPENDIX B.****MENTAL HEALTH****REGULATION No. 53:****STANDARDS FOR ABILITY TO PAY  
TREATMENT CHARGES**

Determination of the ability and the amount of the liability of the spouse, parents, or children to pay for the cost of the treatment of a patient in a state hospital, as provided in Section 12-21, 12-22 and 12-23 of the Mental Health Code, shall be made in accordance with the schedule of gross monthly income and number of dependents set forth in this regulation. Monthly income shall be defined to include any and all income of the responsible relative. Dependent persons shall be those persons legally dependent upon the responsible relative for more than one-half of their support.

Charges up to the prevailing maximum rate shall be assessed first against all assets and income of the patient or the estate of the patient until the estate is depleted to an allowable reserve of \$500. Valuation of real and personal property shall be included as part of the allowable reserve.

The income of a patient and his assets after subtracting encumbrances shall be subject to charges for the cost of his treatment after the needs of his dependents for a reasonable standard of living are provided. The needs of these dependents shall be based on amounts expended for living costs up to an amount equal to the minimum income for which the responsible relative would be subject to a charge in the attached schedule of charges. These dependents must show actual expenditures of any amounts allowed for their support. Any amounts not expended for the support of these dependents shall be subject to treatment charges.

If a responsible relative who is a legal dependent of a patient is designated as payee of patient benefits and is using such benefits as his income, charges shall be established on the total combined income in accordance with the



attached schedule of charges. In such cases the allowable reserve of \$500 shall be waived.

The amount to be paid for treatment charges for the patient shall be in addition to the cost of the patient's clothing and incidental needs. An amount of \$20 per month of the monthly income of the patient, or more or less as needed and used, may be allowed for clothing and incidental needs of the patient. Any amount allowed for the patient's clothing and incidental needs which is not expended shall be subject to treatment charges.

All payments received from hospitalization insurance due the patient shall be credited at the prevailing maximum rate of charge.

The patient's beneficial interest in a trust constitutes an estate and shall be subject to charges the same as any patient's estate as set forth in the preceding paragraphs. The net income of a patient which is derived from a life estate or property held in joint tenancy shall be subject to charges up to the prevailing maximum rate.

Charges shall not be assessed for veterans receiving treatment at government expense on a contract with the Veterans Administration for the period from the date of the veteran's admission to the hospital to the date his claim is allowed by the Veterans Administration. Such patients shall be subject to charges from the date the government contract is canceled.

In those cases in which a responsible relative is not able to pay all of the costs of treatment on the basis of current income but has real and/or personal property having a market value in excess of \$15,000; the amount of such property over \$15,000, in conjunction with income in excess of that amount needed to maintain a reasonable standard of living for the responsible relative for the remainder of his life, and for his dependents for the anticipated periods of their dependency, shall be used as a measure of the ability to pay.

Assets of the responsible relative above the amount of \$15,000 after subtracting encumbrances shall be divided by

the number of months of life expectancy of the youngest adult dependent or the number of months required for the youngest dependent to reach majority (age 18 for girls and age 21 for boys), whichever is greater. The most recent table of ordinary life expectancy statistics of the National Office of Vital Statistics shall be used to arrive at the months of life expectancy for adult dependents. The resulting quotient shall be added to the assessable monthly income of the responsible relatives and the combined income shall be applied to the attached schedule of charges. The assessable income of a responsible relative is computed by subtracting from the gross income those allowable deductions specified in Mental Health Regulation No. 54.

Out-of-state residents and alien patients shall be subject to the maximum rate of charge. If arrangements cannot be made for deportation because of conflicting legislation between states, failure to prove residency in another state, or other limiting factors, assessment of charges shall be based on standards set forth in this regulation.

Voluntary payments will be accepted from persons whose incomes are below the minimum base amounts shown on this schedule. Voluntary payments in excess of required amounts will be accepted from responsible relatives as well as from persons not legally responsible.

## MENTAL HEALTH

REGULATION No. 53:

**SCHEDULE FOR DETERMINING, ON THE BASIS OF  
GROSS INCOME OF THE FAMILY UNIT, THE  
AMOUNT TO BE PAID FOR TREATMENT  
CHARGES FOR THE PATIENT, IN ADDITION TO  
THE COSTS OF THE PATIENT'S CLOTHING AND  
INCIDENTAL PERSONAL NEEDS**

Monthly Income of the Family Unit	NUMBER OF PERSONS IN THE FAMILY UNIT							
	(Includes head of family and all dependents, but does not include patient)							
	1	2	3	4	5	6	7	8

Voluntary payments will be accepted from persons whose incomes are below the minimum base amounts shown on this schedule: Voluntary payments in excess of required amounts will be accepted from liable persons as well as from non-liable persons.								
\$250-259								
260-269								
270-279								
280-289								
290-299								
300-309	3							
310-319	6							
320-329	9							
330-339	12							
340-349	15							
350-359	18	3						
360-369	21	6						
370-379	24	9						
380-389	27	12						
390-399	30	15						
400-409	33	18	3					
410-419	36	21	6					
420-429	39	24	9					
430-439	42	27	12					
440-449	45	30	15					
450-459	48	33	18	3				
460-469	50	36	21	6				
470-479	50	39	24	9				
480-489	50	42	27	12				

# A 11

490-499	50	45	30	15				
500-509	50	48	33	18	3			
510-519	50	50	36	21	6			
520-529	50	50	39	24	9			
530-539	50	50	42	27	12			
540-549	50	50	45	30	15			
550-559	50	50	48	33	18	3		
560-569	50	50	50	36	21	6		
570-579	50	50	50	39	24	9		
580-589	50	50	50	42	27	12		
590-599	50	50	50	45	30	15		
600-609	50	50	50	48	33	18	3	
610-619	50	50	50	50	36	21	6	
620-629	50	50	50	50	39	24	9	
630-639	50	50	50	50	42	27	12	
640-649	50	50	50	50	45	30	15	
650-659	50	50	50	50	48	33	18	3
660-669	50	50	50	50	50	36	21	6
670-679	50	50	50	50	50	39	24	9
680-689	50	50	50	50	50	42	27	12
690-699	50	50	50	50	50	45	30	15
700-709	50	50	50	50	50	48	33	18
710-719	50	50	50	50	50	50	36	21
720-729	50	50	50	50	50	50	39	24
730-739	50	50	50	50	50	50	42	27
740-749	50	50	50	50	50	50	45	30
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780-789	50	50	50	50	50	50	50	42
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800-809	50	50	50	50	50	50	50	48
810-819	50	50	50	50	50	50	50	50

## MENTAL HEALTH

## REGULATION No. 54:

ALLOWANCES FOR UNUSUAL EXPENSES  
OR CIRCUMSTANCES IN DETERMINING  
ABILITY TO PAY TREATMENT CHARGES

If examination reveals unusual expenses or other circumstances which indicate that the gross income is not an adequate measure of ability to pay treatment charges for a patient in a state hospital, allowances for the unusual expenses and circumstances *listed below* shall be made by decreasing the gross income and by using the resultant amount as income in applying the schedule for the purpose of determining the monthly charge.

Proof of payment of the unusual expenses, or proof of circumstances, must be furnished upon request.

1. Expense of medical, dental and related costs, including treatment and orthopedic appliances for various types of handicaps, in excess of 4 per cent of the gross income. Full allowance for medical expenditures of dependents age 65 or over shall be made. Funeral expenses for dependents or other members of the family shall be included as medical expense if such funeral costs are not covered by insurance and are substantiated by a proper receipt.
2. Expense of contributing toward support of relatives, other than dependents, outside the home.
3. Expense of laundry, housekeeper, cleaning woman, babysitter, nursery school, or other care of dependents outside the home, when the responsible relative is the spouse of the patient; for other responsible relatives when such expenses are necessary in connection with the support of minor children or other dependents due to the responsible relative's employment, and therefore no one being at home to perform these services.
4. Expense of education of dependents in excess of \$50 per month per dependent.
5. Expense of educational courses for an employed responsible relative.

6. Expense of rent or mortgage payments of responsible relatives in excess of 25 per cent of gross income. In case of mortgages, consideration is given only to required principal and interest on contracts.
7. Expense of maintaining a second home when the responsible relative's family cannot be moved to place of employment.
8. Expense of alimony or court-ordered support paid by the responsible relative.
9. One additional dependency for each when the responsible relative or his spouse is blind.
10. One additional dependency for the responsible relative when age 65 is attained. One additional dependency when the spouse of such responsible relative attains age 65.
11. One additional dependency for the responsible relative when more than one-half of the patient's support is provided by the responsible relative outside of the hospital during the period of assessment of charges.
12. Expense of court-ordered payments on obligations of the responsible relative outstanding at the time of the patient's admission.
13. Expense of clothing and commissary items for a second (or more) patient(s) for whom the relative is responsible.
14. Expense of travel of the responsible relative only when required for the job and if not reimbursed by the employer.
15. Allowance of a dependency for a day care or night care patient when such patient resides in the home of the responsible relative while not receiving treatment.



MENTAL HEALTH

REGULATION No. 55:

PETITION FOR RELEASE FROM OR MODIFICATION OF TREATMENT CHARGES

Any person who has been billed for amounts due as treatment charges for a patient in a state hospital may petition for a release from or modification of such charges by filing a written request for a hearing with the Department of Mental Health within one year after such bill has been issued.

On the basis of the grievances presented in the petition, the Department may make correction for error or adjustments to meet the objections in the complaint. If not allowed, the Department shall set a date for hearing not more than 90 days thereafter.

Notice of the date, time, and place of hearing shall be mailed to the address given on the petition of the person entering the petition not less than seven days in advance of the date of such hearing. Notice shall be deemed given when deposited in a stamped, addressed envelope in the United States Mail.

A person petitioning shall appear personally and may bring such witnesses as may be deemed necessary and may be represented by a person of his own choice.

The hearing officer duly authorized by the Director of the Department shall conduct the hearing in an orderly manner. He shall have the authority to subpoena witnesses and to compel the production of books and records. All witnesses in such hearing shall swear to or affirm the truth of their testimony.

The common law rules of evidence shall not be enforced in the conduct of the hearing but the hearing officer may ask and receive answer to such questions as are pertinent and proper for a fair determination of the case. Exhibits may be received as part of the evidence and shall be numbered in order according to whether they are the Department's or the petitioner's exhibits.

A certified true copy of the record of the hearing shall be kept by the Department of Mental Health and such record shall be furnished by it to any court or board reviewing its decision, or to a person authorized by the petitioner to examine the record for a legitimate purpose.

The hearing officer shall make a determination on the basis of rules and regulations of the Department and on the evidence presented. The record shall be reviewed by the Director and the decision of the hearing officer shall become final only upon receiving the signature of the Director indicating his assent thereto.

The Department of Mental Health is not authorized nor empowered to review its findings, and neither is it authorized to hold a subsequent hearing based on the same set of facts existing at the time the Department's final order was entered.

Any person aggrieved by the decision of the Department upon such hearing may, within thirty days thereafter, file a petition with the Department for review of such decision by the Board of Reimbursement Appeals. Upon receiving a petition for review by the Board of Reimbursement Appeals, the Department shall notify the Board, which shall render its decision on the petition within thirty days after it is filed and certify its decision to the Department. Concurrence of the majority of the Board is necessary in any such decision. The Board of Reimbursement Appeals may approve action taken by the Department or may remand the case to the Director with recommendations for redetermination of charges.

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DEC 16 1964

JOHN F. DAVIS, CLERK

IN THE  
**SUPREME COURT**  
OF THE  
**UNITED STATES**

OCTOBER TERM, 1963

No. 111

DEPARTMENT OF MENTAL HYGIENE OF THE STATE OF  
CALIFORNIA, *Petitioner,*

v.

EVELYN KIRSCHNER, Administratrix of the Estate  
of ELLINOR GREEN VANCE, *Respondent.*

ON WRIT OF CERTIORARI TO THE SUPREME  
COURT OF THE STATE OF CALIFORNIA

BRIEF FOR THE STATE OF WASHINGTON  
AS AMICUS CURIAE

JOHN J. O'CONNELL,  
*Attorney General,*

STEPHEN C. WAY,  
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Office & Post Office Address: Temple of Justice, Olympia, Washington

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INTEREST OF THE STATE OF WASHINGTON

The State of Washington has statutory provisions (set forth in full in the appendix) for the judicial imposition of liability for the payment of hospitalization costs at state hospitals, for persons committed thereto, by the mentally ill person's



estate, spouse, parents or children, or a combination thereof.

Provision is also made in the Laws of Washington for the payment for hospitalization costs of mentally ill persons by relatives, as well as the mentally ill person's estate, when voluntarily admitted to a state hospital for treatment.

Although, the statutory procedures differ between the State of Washington, and the petitioner, State of California, and other states appearing herein *amicus curiae*, the constitutional principal involved: i.e., the imposition of liability upon certain relatives of the mentally ill person for hospitalization costs of a mentally ill person at state hospitals, denies "equal protection of the law" contrary to the Constitution of the United States, applies with equal force upon the Laws of the State of Washington.

The State of Washington collects revenue for the costs of the care, treatment and support of mentally ill persons in its state hospitals annually in an amount in excess of two million dollars (\$2,000,000.00). This amount is, of course, far less than the actual cost of maintaining the programs for the mentally ill in the state hospitals, but, nevertheless Washington can ill-afford the loss of this source of revenue.

The State of Washington joins the petitioner, State of California, in urging the reversal by this court of the decision of the Supreme Court of the State of California, for that decision places in jeop-

ardly, the statutory provisions of this state for the payment by relatives of hospitalization costs of mentally ill persons. Additionally, we concur with the State of California, in the arguments of law as set forth in the brief of the Honorable Thomas C. Lynch, Attorney General of the State of California on behalf of the petitioner.

## ARGUMENT

**THE IMPOSITION BY STATUTE OF LIABILITY FOR THE PAYMENT OF THE COSTS OF CARE AND TREATMENT AT A STATE HOSPITAL UPON CERTAIN CLOSE RELATIVES OF THE MENTALLY ILL PERSON IS NOT AN ARBITRARY AND UNREASONABLE CLASSIFICATION CONSTITUTING A DENIAL OF EQUAL PROTECTION OF THE LAWS.**

In *State ex rel. Bacich vs. Huse*, 187 Wash. 75, 59 P. (2d) 1101 (1936) the Supreme Court of the State of Washington in commenting upon the special privileges and immunities provision of the State Constitution and of the equal protection clause of the 14th Amendment of the Federal Constitution stated:

"The aim and purpose of the special privileges and immunities provision of Art. I, § 12, of the state constitution and of the equal protection clause of the fourteenth amendment of the Federal constitution is to secure equality of treatment of all persons, without undue favor on the one hand or hostile discrimination on the other.

To comply with these constitutional provisions, legislation involving classifications must meet and satisfy two requirements: (1) The

legislation must apply alike to all persons within the designated class; and (2) reasonable ground must exist for making a distinction between those who fall within the class and those who do not.

Within the limits of these restrictive rules, the legislature has a wide measure of discretion, and its determination, when expressed in statutory enactment, cannot be successfully attacked unless it is manifestly arbitrary, unreasonable, inequitable, and unjust. *State v. McFarland*, 60 Wash. 98, 110 Pac. 792; *State ex rel. Davis-Smith Co. v. Clausen*, 65 Wash. 156, 117 Pac. 1101, 37 L. R. A. (N. S.) 466; *Litchman v. Shannon*, 90 Wash. 186, 155 Pac. 783; *State v. Cannon*, 125 Wash. 515, 217 Pac. 18; *Northern Cedar Co. v. French*, 131 Wash. 394, 230 Pac. 837; *Garretson Co. v. Robinson*, 178 Wash. 601, 35 P. (2d) 504."

The statutes of Washington relating to the imposition of liability upon relatives for the costs of care and treatment of mentally ill persons in state hospitals, and § 6650 of the California Welfare and Institutions Code, apply with equal force upon all persons within the legislative classification. It is clear that a statute which is offensive to the equal protection clause of the Constitution of the United States must be unreasonable or arbitrary, and the classification is not unreasonable or arbitrary in its inclusion or exclusion features as long as there is some basis for the differentiation between classes included, as compared to those excluded from its operation, and if the differentiation bears a reasonable relation to the purposes to be accomplished by the statute.

The statutory provisions of the State of Washington and those of the State of California have an important and proper legislative purpose and function in aiding the state to, at least partially, defray the cost of caring for and treating those unfortunate citizens afflicted with mental illness. It is neither unreasonable, discriminatory nor arbitrary, for the legislatures of the states to require the imposition of liability upon close relatives for the payment of the costs of hospitalization of mentally ill persons, based upon financial ability to pay, such relatives being the ones directly benefiting from the restoration of the mentally ill person to good mental health.

The interest of relatives in the well being and restoration to mental health of a mentally ill person is greater, where there is a monetary obligation to pay for the care and treatment in a state hospital. This interest, evidencing itself by visitations to the patient, even though it may be prompted, at least in part, by pecuniary considerations, is a valuable adjunct to the treatment program of the state hospitals. Although, this interest in a mentally ill person by his relatives, would no doubt continue even though the monetary obligations were held constitutionally invalid, it would become less pronounced in many cases.

Statutes such as those at issue in the case at bar which may to some, seem unwise, improvident, or out of harmony with a particular school of thought, is a matter for legislative determination rather than

judicial consideration; and for protection against abuses by legislatures, people must resort to the polls, not to the courts. *Williamson vs. Lee Optical of Oklahoma*, 348 US 483, 99 L. ed. 563, 75 S. Ct. 461 (1955).

### CONCLUSION

The classification in the statutes in question, are not arbitrary nor unreasonable and are founded upon valid considerations of long standing and customary familial responsibility, and, it is not unreasonable nor constitutionally discriminatory to impose a statutory liability upon close relatives of a mentally ill person to pay state hospitalization costs based upon financial ability to do so.

Accordingly, it is respectfully submitted that the judgment of the Supreme Court of the State of California should be reversed.

Respectfully submitted,

**JOHN J. O'CONNELL,**  
Attorney General,

**STEPHEN C. WAY,**  
Assistant Attorney General.

## APPENDIX A

## STATUTORY PROVISIONS

## REVISED CODE OF WASHINGTON 71.02.230.

Expenses—By whom payable. After a person has been found mentally ill under RCW 71.02.200, the court shall, after reasonable notice of the time, place and purpose of the hearing has been given to persons subject to liability under this section, inquire into the ability of the person's estate, or his spouse, parents or children, or any combination thereof, to pay the charges for transportation and hospitalization in a state hospital, detention pending proceedings, and court costs. If the court finds that the patient's estate or above named relatives, or combination thereof, are able to pay such charges or any part thereof, an order to such effect shall be entered. If the court finds that neither the patient's estate nor said relatives are able to pay the charge for transportation to and hospitalization in a state hospital, such costs shall be borne by the state of Washington. If the court finds that neither the patient's estate nor above relatives can pay charges for detention pending proceedings or court costs, such costs shall be borne by the county. When a patient is a resident of another county, the committing county shall recover from the county of the patient's residence all costs and expenses of the patient's detention and commitment.



REVISED CODE OF WASHINGTON 72.23.120.

Charges for hospitalization. Payment of hospitalization charges shall not be a necessary requirement for voluntary admission: *Provided, however,* The department may request payment of hospitalization charges, or any portion thereof, from the patient or relatives of the patient within the following classifications: Spouse, parents, or children. Where the patient or relatives within the above classifications refuse to make the payments requested, the department shall have the right to discharge such patient or initiate proceedings for involuntary hospitalization. The maximum charge shall be the same for voluntary and involuntary hospitalization.

REVISED CODE OF WASHINGTON 71.02.330.

Modification of order requiring payment. The superior court may, upon petition, modify any existing order entered pursuant to RCW 71.02.230, where it is shown that the petitioner is unable to continue payment of hospitalization charges. A hearing may be had on such petition in the nature of proceedings supplemental to execution in civil actions. Such petition must be served on the department at least ten days prior to hearings.

REVISED CODE OF WASHINGTON 71.02.340.

Modification of order to require payment by relative. The department may apply for modification of any existing order where it is shown that there

exists some relative within the classification set forth in RCW 71.02.230 who is able to pay hospitalization charges. Such relative must be served with notice of such petition in the same manner as summons is served in civil action.

**REVISED CODE OF WASHINGTON 71.02.350.**

**Transportation charges—Collection.** The department shall have the right to collect hospitalization and transportation charges from a patient's estate or person legally responsible for the support of a patient without the entry of any order to such effect under RCW 71.02.230. If the person administering the patient's estate or the person responsible for the support of the patient is unable to pay such charges he shall petition the court for an order declaring such inability pursuant to RCW 71.02.330.

**REVISED CODE OF WASHINGTON 71.02.410.**

**How computed.** Charges for hospitalization of patients in state hospitals are to be based on the actual cost of operating such hospitals for the previous year, taking into consideration the overhead expense of operating the hospital and expense of maintenance and repair, including in both cases all salaries of supervision and management as well as material and equipment actually used or expended in operation as computed by the department. Costs of transportation shall be computed by the department.

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Estate of Ellinor Green Vance,

*Respondent.*

## BRIEF FOR THE RESPONDENT

on Writ of Certiorari to the Supreme Court  
of the State of California

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**In the Supreme Court**  
**OF THE**  
**United States**

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OCTOBER TERM, 1964

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No. 111

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DEPARTMENT OF MENTAL HYGIENE OF THE  
STATE OF CALIFORNIA,

*Petitioner,*

vs.

EVELYN KIRCHNER, Administratrix of the  
Estate of Ellinor Green Vance,

*Respondent.*

**BRIEF FOR THE RESPONDENT**

on Writ of Certiorari to the Supreme Court  
of the State of California

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**JURISDICTION**

Though it is true that the State of California has no "equal protection clause" in the exact phraseology in which the Fourteenth Amendment of the United States Constitution is couched, California does have



equivalent provisions in its Constitution. Article I, section 11 of the California Constitution reads as follows:

“All laws of a general nature shall have a uniform operation.”

In *Dept. of Mental Hygiene v. McGilvery*, (1958) 50 Cal.2d 742, 329 P.2d 689 the Court interprets this section and says:

“Article I, section 11 of the California Constitution requires that all laws of a general nature have a uniform operation. This has been held generally to require a reasonable classification of persons upon whom the law is to operate. The classification must be one that is founded upon some natural or intrinsic or constitution distinction (citing cases). Likewise, those within the class, that is those persons similarly situated with respect to that law, must be subjected to equal burdens (citing cases). The clause of the Fourteenth Amendment to the federal Constitution which prohibits a state from denying to ‘any person within its jurisdiction the equal protection of the laws’ has been similarly construed.”

Further, Article I, section 21 of the California Constitution prevents the granting of special privileges or immunities to particular citizens or classes of citizens which are not granted to all (*Mansur v. Sacramento* [1940] 39 Cal.App.2d 426, 103 P.2d 221). This section reads as follows:

“No special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the Legislature; nor shall any citizen,

or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens."

Since the judgment of the California Supreme Court need not be based on the Fourteenth Amendment, but can be based upon the California Constitution, it therefore rests on an adequate State ground, and it appears that the writ was improvidently issued (*Wilson v. Loew's* [1958] 355 U.S. 597, 2 L.Ed. 519, 78 S.Ct. 526). Even though it may appear from the decision of the California Court that the decision is based upon a determination of the federal question, a construction of the Fourteenth Amendment by this Court opposed to the California Supreme Court would not effect the California Supreme Court's determination, because its decision is independently sustainable under the California Constitution.

In the case at bar the respondent prevailed in the state Court. It would have been different had the respondent lost in the State Supreme Court because then federal rights would have been violated. This rule is stated by this Court in *Indiana ex rel. Anderson v. Brand* (1937) 303 U.S. 96, 98, where the Court says:

"Where the state court does not decide against a petitioner or appellant upon an independent state ground, but deeming the federal question to be before it, actually entertains and decides that question *adversely to the federal right asserted*, this Court has jurisdiction to review the judgment if, as here, it is a final judgment. We

cannot refuse jurisdiction because the state court might have based its decision, consistently with the record upon an independent and adequate non-federal ground." (italics ours).

In the case at bar the state Court ruled in favor of the claimed federal right.

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#### STATEMENT OF THE CASE

Petitioner's judgment in the trial Court was on the pleadings (R. 19-20). No evidence was introduced or considered by the trial Court, so all of the facts in this case are contained in the pleadings which consist of petitioner's complaint (R. 1-4) and respondent's answer (R. 8-10).

However, petitioner states in his brief that respondent is the principal beneficiary of the estate of Ellinor Vance, the deceased daughter (Pet.Br., p. 3). Nowhere in the Transcript of Record can this be substantiated. Respondent made the same representation to the Supreme Court of the State of California (R. 49), but that Court did not so find in its decision.

The fact is that it does not appear from the record before the Court who are the beneficiaries in the estate of Ellinor Vance, or who may be the heirs of the mentally ill person. Nor does it appear from the record whether there are others claiming as creditors against the estate of the decedent.

Petitioner argues that the trial Court was asked to take judicial notice of the probate file of the estate

of Ellinor Green Vance (R. 49), but normally a Court will not in one case take judicial notice of the records or judgment in another case. This is so even though the action is pending in or was determined by the same Court, and was between the same parties (*Johnston v. Ota* [1941] 43 Cal.App.2d 94, 110 P.2d 507).

A second correction respondent wishes to make to plaintiff's Statement of the Case relates to the amount of money available in the estate of the mentally ill person to pay the accrued charges of the Department of Mental Hygiene. Petitioner states that the amount of money owing the Department exceeds the assets in the guardianship estate (Pet.Br., p. 3). The Supreme Court of California heard the same argument (R. 45-46) but impliedly found that there was "some \$11,000.00 in cash, \* \* \*." Apparently the District Court of Appeal of California came to the same conclusion (R. 27-28).

The fact before the Court is that respondent in her capacity as guardian of the estate of the mentally ill person offered to pay the claim out of the assets of the patient's estate, but petitioner refused to accept payment from the guardian. Now petitioner is saying that the guardian did not have enough money to pay the charge, but the fact is that she did.

It appears from petitioner's own statement (Pet. Br., p. 3) that the lien of \$6,425.00 granted petitioner in 1958 covered two years of the same period covered by the petitioner's claim of \$7,554.22, which is the subject of this suit. If petitioner is to recover twice for this two year period the total claim would be

\$13,979.22 which does exceed the money in the guardianship estate by approximately \$3,000.00, but under no theory is petitioner entitled to collect twice for that two year period.

According to petitioner's claim the sum of \$7,554.22 was for a four year period (Pet.Br., p. 3). Divide this by four and we have an average annual charge of \$1,888.55. Giving the respondent credit for those two years she has a total credit of \$3,777.10 which is \$777.10 more than the total bill claimed by petitioner.

Aside from these observations respondent accepts plaintiff's statement of the case.

#### **SUMMARY OF ARGUMENT**

The California Legislature has reserved state hospitals, such as Agnews, for the dangerously insane. California Welfare and Institutions Code § 6650 (section references will be to this Code unless otherwise indicated) appertains to the support of those persons who are in those hospitals only, and it does not cover the area of support for those mentally ill who are lodged elsewhere.

The senile and those not dangerously mentally ill are committed to a county counselor of mental health, and they may be placed in a suitable licensed home, sanitarium or rest haven home (§ 5076). If such a person is indigent his husband, wife, father, mother, or children, in the order named must reimburse the county for his support. Further, the cost of the main-

tenance of such a person can be charged directly to the relative (§ 5077). This section of the code remains unimpaired by the decision of the California Supreme Court in this case.

State hospitals, such as Agnews, are for the dangerously insane and are primarily for the protection and benefit of the public. The business manager of each hospital and all the employees therein that he may appoint as police officers have "all the powers of police officers" (§ 6563). For those persons with a mental disease which is likely to be transmitted to descendants, or for those persons who suffer a mental deficiency, or for those persons who suffer a marked departure from normal mentality, sterilization is provided (§ 6624). It is difficult to understand petitioner's argument that all of this is for the benefit of the relatives.

Clearly, the conduct of these state hospitals for the treatment of those who would endanger themselves or others if at large is a proper state function, and this being so, the expense of running them should be borne by the state for the reasons the Court gave in *Dept. of Mental Hygiene v. Hawley* (1963) 59 Cal.2d 247, 379 P.2d 22, which case is dispositive of the case before the Court.

Section 6650 imposes an absolute, unconditional liability on servant relatives without regard to their ability to pay, without regard to the needs of the patient, without regard of the rights of the heirs of the relatives, and without regard of the rights of the relative to control the spending of his own money.



Which of several relatives are to be sued by the Department is left to the whim and uncontrolled discretion of a department head; he may remit or forgive the liability of one relative and go to judgment against another. No standards for collection procedures are provided by the section. Further, the section does not give the relative the right to recoup from the assets of the patient. Manifestly, such a law is unconscionable and does not meet the standards of fair play inherent in the Equal Protection Clause.

Lastly, the unfairness of § 6650 must be viewed in the light of recent legislation. In this state the mentally deficient without an estate of his own, the needy children and the needy blind are supported by tax money. Tax supported programs have also been set up for the inebriates and drug addicts. Surely this emphasizes the unfairness of the section that imposes a liability on an adult daughter for the support of her mother who had an estate of her own that may have been larger than that of the daughter's.

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**ONLY THE DANGEROUSLY INSANE ARE COMMITTED TO STATE HOSPITALS SUCH AS AGNEWS IN CALIFORNIA.**

Under commitment procedures of this state if, after examination, the judge believes that the person is either of such mental condition that he is in need of supervision, treatment, care, or restraint, or of such mental condition that he is dangerous to himself or to the person or property of others, and is in need of supervision, treatment, care, or restraint, the judge

may adjudge the person to be mentally ill, and the judge can commit the patient to any one of the three types of facilities set forth in § 5100, which said section reads in part as follows:

“(a) That the person be cared for and detained in a licensed sanitarium or hospital for the care of the mentally ill entitled by law to receive and care for such persons, or that the person be otherwise cared for, until the further order of the court, or

“(b) That the person be committed to the Department of Mental Hygiene for placement in a state hospital designated by the court, or

“(c) That the person be committed to a facility of the Veterans Administration, or other agency of the United States Government, in accordance with the provisions of Section 1663 of the Probate Code.”

Where the judge concludes that the person be committed to the Department of Mental Hygiene for placement in a state hospital, the judge must find that the patient is insane and so far disordered in mind as to endanger health, person, or property, and also find that it is dangerous for life, health, person, and property that such person be at large (27 California Jurisprudence 2d 430). As stated in the case of *Matter of Application of Harcourt* (1915) 27 Cal.App. 642, the Court says:

“There does not appear to be any reasonable ground for doubting that, to justify a judgment or order adjudging a person insane to the extent that his confinement in a hospital for insane per-

sons is necessary to the safety of the public, there must be found in the patient a mental condition from which there will follow more than a mere possibility that he will, by reason of such condition, if allowed to remain at large, 'endanger life, health, person, and property.' The statute does not use the word 'possibly' or any term of analogous signification, and certainly the power to commit was not intended by the legislature to be coextensive with or measured by the possibilities of which a deranged human mind is capable. Minds not deranged from the viewpoint of alienists are equally subject to possibilities the crystallization of which would bring disaster to life or person or health or property. What was intended and what the statute plainly means is that the patient, having been found to be insane, must be committed to an institution established for the care and treatment of lunatics only upon the condition *that it be further found that the degree or character of his affliction is such as to make it reasonably probable or certain that, if allowed to remain at large, he would, by reason of such mental condition, endanger life, person, etc., or become a menace to the safety of the public.*" (italics ours).

If, however, the judge should find that the patient be harmless, then, that patient cannot be committed to the Department of Mental Hygiene for placement in any state hospital. This is covered by § 5102 which reads as follows:

"No case of harmless chronic mental unsoundness or mental deficiency shall be committed to the Department of Mental Hygiene for placement in

any state hospital for the care and treatment of the mentally ill. When any such person becomes mentally ill, however, he may be committed to the Department for placement in a designated state hospital for the mentally ill or to a licensed hospital or sanitarium, as provided in this chapter."

Further, if the patient is found upon examination not to be dangerously mentally ill the Court may commit this patient to the care and custody of the county counselor of mental health, and this is provided for by § 5076, which reads as follows:

"If, on the examination as provided by law, the court finds a person to be mentally disordered and bordering on mental illness but not dangerously mentally ill, the court may commit him to the care and custody of the counselor in mental health and may allow him to remain in his home subject to the visitation of a counselor in mental health and subject to return to the court for further proceedings whenever such action appears necessary or desirable; or the court may commit him to be placed in a suitable home, sanitarium, or rest haven home, subject to the supervision of the counselor in mental health and the further order of the court."

All of the above mentioned sections are in Chapter 1, Part 1, Division VI of the Welfare and Institutions Code, and they are all designated **COMMITMENTS OF MENTALLY ILL PERSONS AND INSANE PERSONS**.

In 1959 Judge Nix, Judge of the Superior Court of Los Angeles County, had a question concerning the

right to commit persons suffering from harmless chronic mental unsoundness, and he directed his question to the Attorney General of this State, and on December 31, 1959 the Attorney General of this State gave his opinion on this question. The opinion is cited as 34 Attorney General's Opinions 313.

One of the questions asked by Judge Nix was as follows:

"Are persons suffering harmless chronic mental unsoundness, or non-psychotic senile persons needing care, treatment, and supervision outside the family home subject to Chapter 1, Part 1, Division VI of the Welfare and Institutions Code relating to commitment of mentally ill persons?"

In reply thereto the Attorney General answered as follows:

"Persons suffering harmless chronic mental unsoundness and non-psychotic senile persons needing care, treatment, and supervision outside the family home are subject to the commitment procedures provided in Chapter 1, Part 1, Division VI of the Welfare and Institutions Code."

In analyzing his answer, the Attorney General stated as follows:

"The problems incident to nonpsychotic seniles including procedure for determination of mental condition, commitment, detention or restraint, custody, care, and treatment, was the subject of legislative analysis by the Assembly Interim Committee on Social Welfare (see: Assembly Interim Committee Reports, 1953-1955, Vol. 19, No. 1, 'The Nonpsychotic Seniles and Related Problems.')."

"A number of legislative and administrative actions were recommended including making the existing law more clear, precise and humane as it relates to the process of detention, restraint, and commitment, especially in the case of elderly people who are aware of their difficulties (pp. 15-19). Little change in the procedure has been made since the report was filed.

"In the opinion request, 'nonpsychotic senile persons' are characterized as being 'aged, undergoing physical infirmities, moderate loss of memory, childishness, irritability or restlessness, careless toilet habits, feeding problems, and occasionally periods of mild depression. . . . Such persons are generally incompetent to care for their person and property, and require supervision and treatment, which is afforded in a rest home, sanitarium or nursing home.'

"It is our opinion that nonpsychotic seniles as defined supra are within the scope of section 5040 and are 'mentally ill persons.' With the exception that the *nonpsychotic senile may not be committed to a state mental hospital* (sections 5102 and 6733 specifically prohibit the admission and require the discharge of those affected with harmless, chronic, mental illness) the other commitment provisions of chapter 1, page 1, division 6 are applicable. These include commitment to licensed sanitariums, hospitals other than a state mental hospital, or other suitable facility (section 5100 (a)), or to a counselor in mental health (section 5076)..'" (italics ours).

Petitioner now argues that many of the patients the Department of Mental Hygiene is caring for in



state hospitals are not actually dangerously mentally ill, but merely senile (R. 81). This may be the fact; petitioner is there and should know. However, if it is in truth the fact, then there has been a violation of the law which directs that harmless mentally ill persons shall not be sent to state hospitals.

Petitioner further argues that today mental hospitals must be considered not as custodial institutions but rather as centers for treatment, and cites as his authority Dr. Rapaport (Pet.Br., p. 27). Perhaps, this is what is happening in the state hospitals of this State, but if it is, this condition is without the approval and consent of the State Legislature.

This section of the brief is confined to the issue of the dangerously mentally ill. However, should the Court consider that broader issues are before the Court, we understand that such issues will be briefed in the amicus brief being submitted on behalf of the National Association for Retarded Children and the American Orthopsychiatric Association.

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**RELATIVES ARE STILL LIABLE FOR THE SUPPORT OF NEEDY  
SENILE PERSONS AND NEEDY PERSONS NOT DANGEROUSLY  
MENTALLY ILL.**

Section 6650 is limited to the liability for the care of an inmate of a state hospital, and it is only with reference to the support of these inmates that the decision of the California Supreme Court applies.

The support of those committed persons who are not dangerously, mentally ill, and who are not lodged

in a state hospital, is provided for in § 5077, and this section reads in part as follows:

"The reasonable cost of maintenance of a person committed under the provisions of Section 5076, in a sum to be fixed by the Court at the time of the commitment, shall be defrayed out of the estate of the patient so committed or shall be a charge upon his relatives liable for his maintenance,

"If, however, the patient is found to be an indigent resident of the county, in accordance with the definition of such residence prescribed in Article 2 of Chapter 2 of Division IV of the Welfare and Institutions Code as amended, and without funds or relatives responsible for his maintenance able to pay such charge, then the expense of his maintenance shall be a charge upon the county in which the court has jurisdiction and shall be paid out of the county treasury upon a ~~written~~ order of the judge of the superior court of the county, directing the county auditor to draw his warrant upon the county treasurer specifying the amount of such expense.

"All funds expended by the county for the maintenance of such patient, or such maintenance in a sum or rate per day or per month fixed by the board of supervisors where such patient is cared for in a county institution, shall be a charge against such patient or against his husband, wife, father, mother, or children, in the order named and the county shall be entitled to reimbursement therefor. If such patient has property or acquires any the county shall have a claim against him or his estate, if deceased, to the amount of expense incurred and said claim shall be enforced,

if necessary, by action against him or his estate, if deceased, upon order of the board of supervisors of the county incurring such expense. If the patient has such husband, wife, father, mother, or children liable to him for his maintenance, the county shall have a claim against such relatives, or any of them, in the order named, to the amount of expense incurred, and said claim shall be enforced, if necessary, by action against such relatives, or any of them, upon order of the board of supervisors of the county incurring such expense."

The above quoted section refers to "his relatives liable for his maintenance." The general rule fixing the reciprocal duties of spouses, parents and children in maintaining each other is set forth in the Uniform Liability for Support Act in California Civil Code Sections 242 and 243, which sections read as follows:

"Every man shall support his wife, and his child; and his parent when in need. The duty imposed by this section shall be subject to the provisions of Sections 175, 196, and 206 of the Civil Code."

"Every woman shall support her child; and her husband and her parent when in need. The duty imposed by this section shall be subject to the provisions of Sections 176, 196, and 206 of the Civil Code."

So we conclude that the liability imposed by § 5077 is based upon the need of the patient and the ability of the relative to pay.

The care provided for the senile persons and persons who are not dangerously mentally ill under § 5076

is obviously for the benefit of the patient and his relatives, and it is only right and proper that a relative should provide for the support of such a patient where the patient is in fact in need and the relative has the ability to support.

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**THE CASE OF DEPARTMENT OF MENTAL HYGIENE v. HAWLEY  
IS DISPOSITIVE OF THE ISSUES OF THIS CASE.**

In *Dept. of Mental Hygiene v. Hawley* (1963) 59 Cal.2d 247, 379 P.2d 22, the Department of Mental Hygiene attempted to collect from a father for the cost of care, support and maintenance in a state hospital for the mentally ill of his son who had been charged with a crime, but before trial of the criminal issue had been found by the Court to be insane and was committed to a state hospital. There the Court said at page 255:

"From what has been said it is apparent that a person committed to a state institution under the provisions of Sections 1026 or of Sections 1368 et seq. of the Penal Code is held for the primary purpose of protection of the public in the course of administration of laws prohibiting crime."

At page 256 of the decision, the Court said:

"The mere fact that innocent persons are relatives of an accused or convicted person does not deprive them of their fundamental rights or constitute a lawful basis for a statute or judgment whereby their property may be taken to be the cost of prosecuting, detaining, or otherwise treating the accused."

We wish to point out that the liability imposed in the case of *Dept. of Mental Hygiene v. Hawley* (supra) and the liability imposed in the case before the Court was of the same source. The last sentence of § 6650 reads as follows:

"\* \* \*. The liability of such persons and estates shall be a joint and several liability, and such liability shall exist whether the mentally ill or inebriate has become an inmate of a state institution pursuant to the provisions of *this code* or pursuant to the provisions of Sections 1026, 1368, 1369, 1370, and 1372 of the *Penal Code*." (italics ours).

Petitioner cites *Kough v. Hoehler* (1952) 413 Ill. 409, 109 N.E.2d 177 (R. 71) for the proposition that the two types of commitment should be handled differently. It is true that they are handled differently in the State of Illinois, because in Illinois the act under question in the *Kough* case "excludes from its provisions mentally ill persons who are in custody on a criminal charge." However, in this State the legislature has declared in § 6650 that both types of commitments should be charged and the liability be imposed in the same manner.

Not only is the source of liability the same in the two California cases, but the facts are parallel. In both cases the patient was an inmate in a state hospital, and in both cases the Court recognized the element of danger to the patient himself or others if at large. In the case before the Court the California Supreme Court quoted from *Hawley* as follows (R. 55):

“\* \* \*. ‘The enactment and administration of laws providing for sequestration and treatment of persons in appropriate state institutions—subject of course, to the constitutional guaranties—who would *endanger* themselves or others if at large is a proper state function; being so, it follows that the expense of providing, operating and maintaining such institutions should (subject to reasonable exceptions against the inmate or his estate) be borne by the state.’” (*italics ours*).

Obviously the Court is not talking about senile persons.

Further, the Court has in mind the nature of the institutions that are called state hospitals for the mentally ill. In order to understand the nature of these institutions, let us look to some of the provisions concerning how they are operated and the treatment afforded the patients.

The business manager of each of these hospitals and certain designated employees are police officers. Section 6563 provides as follows:

“The business manager of each State hospital may with the approval of the superintendent, designate, in writing, as a police officer, one or more of the bona fide employees of the hospital. The business manager and each such police officer have all the powers of peace officers. Such police officers shall receive no compensation as such and the additional duties arising therefrom shall become a part of the duties of their regular positions. When and as directed by the business manager or the superintendent, such police officers shall enforce the rules and regulations of



the hospital, preserve peace and order on the premises thereof, and protect and preserve the property of the State."

Section 6624 provides for sterilization of certain of the patients, and this can be done without the consent of the patient or his relatives.

All of these measures are necessary in the custodial care of persons such as the son of Hawley and persons who are dangerously mentally ill. It will be remembered that the son of Hawley was charged with the murder of his own mother.

Petitioner argues that the Court should not have equated the hospitalization of the mentally ill under civil commitment with those confined pursuant to the provisions under the Penal Code (Pet.Br., p. 25). But what difference does it make which route the patient took to get to the state hospital, the purpose of confinement and treatment is the same no matter how the patient got there.

In the case of *Hawley* the insane person allegedly committed a murder, but this is not the reason for his confinement and detention at the state hospital. He is there because he is dangerously insane. The fact that he allegedly committed the murder is merely evidence of his propensities to commit such acts again in the future. Had this propensity of the son of Hawley been discovered by medical examination prior to the time of the alleged murder, the son of Hawley would still have been committed to the same state hospital. The only difference being that the one being a commitment

under the Penal Code and the other being a civil commitment.

Further, the son of Hawley has not yet been convicted of any crime; he was therefore not in the state hospital for punishment. It could be that he may some day regain his sanity, stand trial and be acquitted.

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**SECTION 6650 IMPOSES AN ABSOLUTE LIABILITY ON SERVIENT RELATIVES WITHOUT REGARD OF ABILITY TO PAY OR THE NEED OF THE PATIENT, AND SUCH A CONCEPT DENIES THE RELATIVE EQUAL PROTECTION OF THE LAW.**

In the case before the Court the mother was a committed patient and inmate of Agnews State Hospital for the mentally ill on the date of the death of her adult daughter, Ellinor Vance, which death occurred on or about August 25, 1960. Petitioner billed respondent for the sum of \$7,554.22 for the care and maintenance of the mother covering a period of four years immediately preceding the date of August 25, 1960 (R. 53). Respondent rejected the claim and, petitioner sued the respondent therefor. Respondent demurred to the complaint on the grounds that it did not state a cause of action in that it failed to allege that the mother had no estate of her own. The demurrer was overruled (R. 7), and respondent filed her answer denying the liability and affirmatively pleaded that the mother had a guardianship estate in the amount of \$10,903.35 (R. 9). Both petitioner and respondent filed motions for judgment on the plead-

ings. Petitioner's motion was granted, and respondent's motion was denied (R. 22).

Respondent appealed to the District Court of Appeal of the State of California, and the District Court of Appeal affirmed the judgment (R. 35). The District Court of Appeal apparently found that it was true that there was a sum of \$10,903.35 in the guardianship estate of the mother (R. 28), but held that § 6650 imposed absolute liability on the daughter and on the daughter's estate. The District Court of Appeal stated in part as follows (R. 30):

"The above statute imposes on the persons therein named an unconditional liability for the support and maintenance of a mentally ill relative in a state institution. (Citing cases.) It is clear that it imposes such liability on a daughter of a mentally ill person and on such daughter's estate."

The Court went on to say:

"The liability created by section 6650 is unconditionally imposed and not dependent on ability to pay. (Citing cases.) Nor is it made dependent upon the existence of a 'primary duty' to furnish support. The above statute makes no mention of such expression. It clearly imposes liability, as defendant concedes, on the estate of the mentally ill person. It also expressly provides that the liability of the persons and estates named in the statute 'shall be a joint and several liability.' The law is settled that where an obligation is joint and several, any or all of the persons obligated may be compelled to pay the indebtedness. A person

thus liable may be sued alone without joining any others also liable. In the case at bench, therefore, it was permissible for the Department of Mental Hygiene to enforce the statutory liability against the daughter of the mentally ill person without proceeding against the mentally ill person herself. (Citing cases.)"

Respondent petitioned the Supreme Court of the State of California for a hearing and posed the following questions to that Court (R. 36):

"(a) Does Welf. C. 6650 impose an unconditional and absolute liability upon an adult child, or her estate, for the care of an incompetent mother by the Department of Mental Hygiene where the mother has adequate funds of her own to pay the charges therefor?

"(b) If the answer thereto is in the affirmative would a judgment under such a statute constitute the taking of defendant's property without due process and a denial of the equal protection of the law?"

The Supreme Court of the State of California answers the first question in its decision as follows:

"\* \* \*. Section 6650 by its terms imposes **absolute** liability upon, and does not even purport to vest in, the servient relatives any right of control over, or to recoup from, the assets of the patient. \* \* \*." (R. 58).

Petitioner now argues that § 6650 is not unconditional in that it is dependent upon ability to pay (Pet.Br., p. 33). This is a new position for petitioner.

To the trial Court petitioner argued as follows:

"The liability of the estate of a daughter is clear from the plain words of the statute. This issue is also completely disposed of by the recent decision of the California Supreme Court in *Department of Mental Hygiene v. McGilvery*, 50 Cal.2d 742 (1958). The court held that section 6650 of the Welfare and Institutions Code made the relatives named therein unequivocally liable for the support and care of the mentally ill person. See also, *Department of Mental Hygiene v. Rosse*, 187 A.C.A. 324 (1960); *Department of Mental Hygiene v. Shane*, 142 Cal.App.2d Supp. 881 (1956)." (R. 14).

Further, petitioner argued to the trial Court that the obligation under § 6650 is a joint and several one, and consequently he could sue the daughter alone without joining the mother's guardianship estate (R. 15).

The California courts have worked hard and long in their endeavor to place an interpretation on § 6650. In *Department of Mental Hygiene v. McGilvery* (supra) the Court makes an extensive study of the legislative history of the section and the many cases applying its rule. In *McGilvery* the liability imposed by § 6650 was declared to be unconditional, and in the case at bench this interpretation has been reaffirmed.

Petitioner next argues that whatever injustice may seemingly grow out of the liability imposed by § 6650, that it is all cured by Civil Code § 1432, which section

gives to joint and several debtors the right of contribution (Pet.Br., p. 35). Let us examine this supposed right of contribution and petitioner's concept of fairness that follows therefrom.

California Civil Code § 1432 reads as follows:

"A party to a joint, or joint and several obligation, who satisfies more than his share of the claim against all, may require a proportionate contribution from all the parties joined with him."

Since the liability imposed by § 6650 is a joint and several liability, the Department of Mental Hygiene can commence its collection proceeding against any one of the persons named in the section. It can sue the patient, or it can sue any one of the servient relatives without joining the others, and the one that pays can sue any of the other servient relatives for the contributive share of each.

Though it may be that the servient relative that pays the Department under the section need not have the ability to pay, the fact of payment is some evidence of ability. However, the servient relative who pays the Department now has a cause of action against the other servient relatives that have not paid, and whatever judgment the paying relative obtains against the others, it will be a judgment for necessities of life provided to the patient, and as such, an execution issuing out of the judgment will not be subject to the exemption provisions of California Code of Civil Procedure § 690.11, which said section deals with the exemption of wages. So it follows that the payment



made to the Department by the paying relative may ultimately be paid in part by another servient relative without regard to the latter's rights to exemption under the exemption laws of this State.

California Code of Civil Procedure § 690.11 provides as follows:

"One-half of the earnings of the defendant or judgment debtor received for his personal services rendered at any time within 30 days next preceding the levy of attachment or execution shall be exempt from execution or attachment without filing a claim for exemption as provided in Section 690.26.

"All of such earnings, if necessary for the use of the debtor's family, residing in this State, and supported in whole or in part by such debtor unless the debts are: (a) incurred by such debtor, his wife or family, for the common necessities of life; or, (b) incurred for personal services rendered by any employee, or former employee, of such debtor."

Since hospital charges are common necessities of life and since the obligation was incurred by the judgment debtor under § 6650 fifty percent of his earnings for services rendered within thirty days next preceding the levy could be reached by execution.

Under § 6650 this can occur even though the patient has an estate of her own, and the servient relative is without an estate and has nothing for the support of himself and his family except wages.

Though the paying relative has a right to sue impoverished relatives, the petitioner is quick to point

out that such a cause of action against the patient must be limited by § 6655. In footnote 24 of petition for a rehearing petitioner said (R. 78):

"Of course, reading sections 6650 and 6655 together, one would have to conclude that the right of the joint and several obligors to obtain contribution from the patient would be tempered by the admonition of section 6655 that the patient must not be stripped of all his assets so as to leave him a burden upon society. The contributing relatives would have no greater right to impoverish the patient than would the Department of Mental Hygiene."

Section 6650 imposes an absolute liability on the estate of a servient relative regardless of how small the estate may be. Further, the liability is imposed without the Department making a demand for payment during the lifetime of the relative. In the case of *Dept. of Mental Hygiene v. Shane* (1956) 142 C.A. 2d Supp. 881, 299 P.2d 747, the Court says:

"It will be seen from section 6650 that the husband, wife, father, mother, or children of a mentally ill person or inebriate, *their estates*, and the estate of such mentally ill person or inebriate, shall be liable for his care, support, and maintenance in a state institution of which he is an inmate. We don't see any connection between the fact that the decedent did not have the ability to pay for his son, the inmate, while he was living and the fact that his estate would be liable. The liability of the father's estate is clearly stated in the section. The matter was briefed in the lower court on the question of the demurrer and the

statute of limitations, and we have considered all the briefs and the demurrer was properly overruled. \* \* \*"

At page 884 the Court says:

"The case must be decided on the plain wording of the statutes and the state statutes say nothing whatever about the size of the estate which a man leaves. \* \* \*"

A servient relative mentioned in § 6650 may have accumulated a small amount of savings during his lifetime for a useful purpose such as the education of his own child. He is not notified during his lifetime of the claim of the Department, but when he dies the Department takes the small estate even though the patient has an estate of her own that may be larger than that of the relative.

We now ask the question what would happen should the patient herself die shortly after the Department's bill has been satisfied out of the small estate of the relative. Who would get the estate of the patient? Presumably the heirs of the patient or the beneficiaries of her Last Will and Testament would be entitled to her estate, and they well may be different persons than the heirs of the servient relative.

Section 6650 makes no provision for the servient relative or his estate to recover the money paid over to the Department, nor does it make any provision under which the payment can be recovered from the estate of the patient. To this the California Supreme Court declares in its decision (R. 58):

“\* \* \*. Such a concept for the state's taking of a free man's property manifestly denies him equal protection of the law.”

#### **SECTION 6650 VIOLATES THE EQUAL PROTECTION CLAUSE.**

Petitioner has appended to his brief on file herein the complete text of 39 N.Y.U. L. Rev. 858 (1964), and we assume that petitioner adopts the views therein expressed.

At page 13 of the Appendix it is stated that three steps seem necessary to a complete judicial analysis of an equal protection problem. We shall take the three steps in the order suggested.

##### **1. What Is the Purpose of the Law?**

The purpose of the law is set forth in § 19 which provides in part as follows:

“The purpose of this code is to provide for protection, care, and assistance to the people of the State in need thereof, and to promote the welfare and happiness of all of the people of the State by providing appropriate public assistance and services to all of its needy and distressed. \* \* \*”

##### **2. What Classification Is Established by §6650?**

The section imposes an absolute liability upon named relatives without regard to the need of the patient or of the ability of the relative to pay. This classification is the interpretation of the Supreme Court of the State of California on this section, and it was also petitioner's interpretation in the trial Court (R. 14).

3. Is There Any Reasonable Relation Between Paragraphs 1 and 2?

There cannot be. The purpose of the Code is to provide assistance to the needy and distressed. The patient in this case is neither; she has an estate of her own of \$11,000.00.

The fact that the patient has an estate of her own and that the patient is not a needy person was brought to the attention of the trial Court at the first appearance of respondent. Respondent demurred on the grounds that plaintiff failed to allege that the patient had no estate of her own out of which the claim of petitioner could be satisfied. (R. 4). The demurrer was overruled and subsequently judgment on the pleadings was entered in favor of petitioner based upon petitioner's argument that § 6650 imposed an unequivocal liability on the daughter and her estate (R. 14).

At page 14 of the Appendix the writer then concludes that the Court found:

"\* \* \* : no law could impose private liability for support of mental patients in state institutions."

There is nothing in the decision that could lead one to believe that the State Legislature could not establish homes for the senile and other harmless mentally ill persons, and provide for payment to the state its cost therefor. Nor would the decision bar the Legislature from charging designated able relatives in the event the patient could not pay his own way. But apparently the State of California does not want its senile and harmless mentally ill persons in large state

homes, it wants these persons maintained at the county level in rest homes; licensed sanitariums and haven homes. In 1957 the State Legislature adopted the Short-Doyle Act, which provides for community mental health services. The intent and purposes of the Act are set forth in § 9000 which provides as follows:

“This division shall be known and may be cited as the Short-Doyle Act. This division is designed to encourage and to assist financially local governments in the establishment and development of mental health services, including services to the mentally retarded, through locally administered and locally controlled community mental health programs. It is furthermore designed to augment and promote the improvement and, if necessary, the expansion of already existing psychiatric services in general hospitals or clinics that help to conserve the mental health of the people of California.”

What the California Supreme Court does conclude in the decision before this Court is that the Legislature cannot impose liability on relatives of the mentally ill in a state hospital such as Agnews, and the reason for this is that in this State our state hospitals are reserved for the dangerously mentally ill and are run for the protection of the public from its inmates and for the protection of its inmates from themselves.

It must be noted that § 6650 does not apply to all state institutions as the writer of the articles seems to imply. Section 6650 applies only to state hospitals for the mentally ill, which type of state institution



is covered by Chapter 1 of Part 4 of Division VI of the Code. Other state institutions provided for in Part 4 of Division VI of the Code are state hospitals for the mentally deficient (§§ 7000-7015) and state inebriate colonies (§§ 7100-7111).

Each of these state institutions has a section covering for costs of care. Section 7011.5 covers the costs of the care of a mentally deficient person, and § 7106 covers the costs of the care in an inebriate colony.

**THE DECISION DID NOT DENY PETITIONER  
PROCEDURAL DUE PROCESS.**

The California Supreme Court has given two reasons why § 6650 violates the Equal Protection Clause. The first reason given is that *Department of Mental Hygiene v. Hawley* (supra) is dispositive of the issue before the Court, and the second reason is that § 6650 imposed an absolute liability upon the relatives even though the patient has assets of her own. The second reason given in the decision was argued by respondent and covered in her petition for a hearing by the Supreme Court of California (R. 39-41).

There respondent argued that she was improperly classified by pointing out that § 19 spelled out the purpose of the law and that it was to assist needy and distressed persons. That since the patient was not needy and distressed, respondent was a person improperly and arbitrarily classified as a person liable under § 6650.

After the Court held that *Dept. of Mental Hygiene v. Hawley* (supra) was dispositive of the issue (R. 55), it nevertheless went on to say:

"Lastly in resolving the issue now before us \* \* \*," and then resolved the issue by saying:

"Section 6650 by its terms imposes absolute liability upon, and does not even purport to vest in, the servient relatives any right of control over, or to recoup from, the *assets* of the patient." (R. 58). (italics ours).

Obviously, the Court had in mind the fact that the patient had an estate of her own of some \$11,000.00; otherwise it could not have used the word "asset."

The adult daughter had no liability under common law or any other section of any of the codes of the State of California other than § 6650 to support the mother. The Court agrees with respondent in her position that the daughter has no more of an obligation than any other person to pay the Department for the support of her mother so long as the mother has assets of her own.

The argument in the California courts was not one of simple priority as to which estate was to be used first as contended by petitioner (Pet.Br., p. 37), respondent's argument was and is that she is improperly classified under § 6650 because the mother had an estate of her own and was not a needy person. Nor, was respondent surprised by the decision. The decision coincides exactly to respondent's contentions.

**CONCLUSION**

Though petitioner contends that some forty-two states and the District of Columbia have statutes similar to § 6650, he has failed to bring to our attention a single statute that imposes an absolute liability upon an adult daughter for the support of her mother who has an estate of her own of some \$11,000.00.

Further, petitioner has not brought to our attention a single statute of any of the other jurisdictions that imposes an absolute liability upon an adult child for the support of a patient in an institution that is reserved for the dangerously mentally ill.

It is respectfully submitted that the judgment of the Supreme Court of California be sustained.

Dated, Redwood City, California,  
December 23, 1964.

JOHN WALTON DINKELSPIEL,  
*Attorney for Respondent.*

ALAN A. DOUGHERTY,  
*Of Counsel.*

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**Supreme Court, U.S.**

**FILED**

**JAN 21 1965**

**U.S. DEPT. OF JUSTICE**

**IN RE**

**Supreme Court of the United States**

**October Term, 1964**

**No. 111**

**DEPARTMENT OF MENTAL HYGIENE OF THE  
STATE OF CALIFORNIA, Petitioner,**

**v.**

**EVILYN KROHNER, Administratrix of the Estate of  
ELEANOR GREEN VANCE, Respondent.**

**On Writ of Certiorari to the Supreme Court of the  
State of California**

**Motion for Leave To File a Brief as Amicus Curiae for  
the National Association for Retarded Children, Inc.  
and the American Orthopsychiatric Association**

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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1964

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No. 111

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DEPARTMENT OF MENTAL HYGIENE OF THE  
STATE OF CALIFORNIA, *Petitioner*,

v.

EVELYN KIRCHNER, Administratrix of the Estate of  
ELLINOR GREEN VANCE, *Respondent*.

---

On Writ of Certiorari to the Supreme Court of the  
State of California.

---

**Motion for Leave to File a Brief as Amicus Curiae**

---

The National Association for Retarded Children, Inc., and The American Orthopsychiatric Association hereby respectfully move for leave to file a brief as a *amicus curiae* in support of respondent in the above captioned matter.

Respondent does not oppose the motion and does not consent solely because respondent does not desire to

concede that the issues before the Court are as broad as contended by the applicants. Petitioner does not consent but likewise will not oppose the motion.

The National Association for Retarded Children, Inc., is a voluntary organization represented in all 50 states by nearly 1,000 state and member units. Membership includes parents of retarded children, professional persons and others. The Association is dedicated to promote the welfare of retarded persons of all ages; to foster the advancement of research, treatment, services and facilities in the field of mental retardation and to develop broader public understanding of the problem of mental retardation. It serves as a clearing-house for gathering and disseminating information regarding the mentally retarded.

The American Orthopsychiatric Association is one of the leading organizations in the United States concerned with problems of mental disorder and abnormal behavior. As of January 1, 1964, the Association had 2,386 members including 905 psychiatrists, 574 psychologists, 745 psychiatric social workers, and 157 members drawn from related fields of anthropology, sociology, education and allied professions. The Association seeks to coordinate and integrate the activities of specialists in medicine, psychiatry, clinical psychology, psychiatric social work, and other behavioral scientists who are concerned with normal and abnormal behavior. The organization has as one of its objectives the fostering of research. It has played a prominent role in the development of the child guidance clinic movement throughout the country. The Association publishes a learned journal, "The American Journal of Orthopsychiatry," now in its thirty-fourth year of publication.



Each of the applicants is deeply interested in the determination of the controversy before the Court. The liability of a citizen to pay for the costs of institutionalization of a mentally retarded or mentally ill relative poses grave problems of national concern of particular significance to the applicants because of their peculiar interests in the advancement of research, treatment, services and facilities for the mentally retarded and the mentally ill.

Respondent in his Reply to the Petition for a Writ of Certiorari and orally to counsel for the applicants has indicated his belief that the narrow issue of the liability of a child to pay the costs of the hospitalization of a mentally ill parent who is dangerous is the sole question before the Court. His brief will be confined to this issue.

The *amicus curiae* briefs of the several states who have been granted leave to appear in this case support the position of the applicants that issues of greater breadth and significance must be considered in order to resolve the instant controversy. The assertions of fact and law and the notions of public policy enunciated in these briefs will not be the subject of full comment by respondent because of his position that only the narrow issue is before this Court.

Applicants seek leave to file a brief *amicus curiae* in order to present to the Court a short rendition of the facts indicating the dimensions of the problems of mental retardation and mental illness in the United States and additional reasons supporting the conclusion of the Supreme Court of California that the California statute imposing liability upon a child

to pay for the costs of hospitalization of a mentally ill parent is unconstitutional.

A brief containing such a presentation is tendered with this motion.

Respectfully submitted,

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January 1965

# **Supreme Court of the State of California**

**October Term, 1958**

**No. 112**

**The Governor of the State, Director of the State of California**

*Respondent*

**Edward Kenneth, Administrator of the State of California**

*Respondent*

**The State of California as the Supreme Court of the State of California**

**And for the National Federation of the Blind and the California League of Senior Citizens, as Petitioners on Behalf of Respondent**

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IN THE  
**Supreme Court of the United States**

October Terms, 1964

No. 111

DEPARTMENT OF MENTAL HYGIENE OF THE STATE OF  
CALIFORNIA,

*Petitioner,*

*vs.*

EVELYN KIRCHNER, Administratrix of the Estate of  
ELLINOR GREEN VANCE,

*Respondent.*

On Writ of Certiorari to the Supreme Court of the State  
of California.

Brief for the National Federation of the Blind and  
the California League of Senior Citizens, as  
Amicus Curiae on Behalf of Respondent.

**Interest of Amici.**

The National Federation of the Blind is a national organization of blind persons vitally interested in federal and state welfare programs. More particularly, in light of the nature of this case, it has been and is dedicated to the removal from all welfare programs of the so called "responsible relatives" provisions. The Federation's direct experience has convinced its membership that such

provisions are unfair and discriminatory and serve to defeat the purposes of welfare. The Federation believes that "responsible relatives" provisions are incompatible with the guarantees of equal protection in the Fourteenth Amendment. In 1961, the Federation saw some of its efforts rewarded in California's total elimination of "relatives responsibility" from the welfare programs embracing the blind and the disabled. Some of the other programs within the State still contain such provisions, including aid to the aged, in whose behalf the California League of Senior Citizens joins in this brief amicus.

If the decision of the California Supreme Court in the *Kirschner* case is upheld, the efforts of these organizations in California will be freed from concern with "responsible relatives" provisions so that other welfare problems can be dealt with. The Federation also believes the *Kirschner* case to be a most valuable precedent which may be found instructive in other jurisdictions where the Federation has members and is active. For all the foregoing reasons, and also because it is felt that the *Kirschner* case stirs issues of profound constitutional significance, The National Federation of the Blind and the California League of Senior Citizens desire to submit this brief in support of the respondent as friends of the Court.

#### **Statement of the Case.**

The case is adequately stated in the briefs of the parties.

## Summary of Argument.

### I.

This Court lacks jurisdiction because the judgment below rests on an adequate independent state ground. California's Constitution contains many different provisions dealing with and guaranteeing the equal protection of law. The judgment below was not rested on the Federal Constitution; it was based upon the California Supreme Court's authority to construe statutes in the light of its developing understanding of the needs of the people of the State and of the meaning of the State Constitution in the light of such needs. Whether public policy is declared by the legislative or the judicial branch of a state's government is irrelevant to any Federal concern.

### II.

The so called "responsible relatives" provisions struck down by the judgment below are incompatible with the principles of equal protection in the Fourteenth Amendment. They carve out a special group, identifiable only by virtue of a special consanguineal relation to a class of poor and afflicted persons who are therefore eligible for welfare assistance, for a species of special and discriminatory taxation of a regressive nature. The classification of the group of "responsible relatives" bears no reasonable relation to the purposes of welfare, is irrational and adverse to and incompatible with the interests of those receiving welfare assistance and hence to the entire community. There is no relation between welfare and the

liability of "responsible relatives" except that of the arbitrary and discriminatory reduction of cost to the public at the expense of the relatives of those persons receiving welfare assistance. This means that poverty is the sole criterion distinguishing between relatives who are "responsible" and those who are not within the meaning of the Code section struck in the judgment below. Finally, a comparison of welfare classifications such as the blind and the disabled as to whom the California legislature has totally eliminated and forbidden any "responsibility of relatives" provisions with others, such as the class of mental irresponsibles or all other classes of welfare recipients who, prior to the decision below as to whom "responsibility of relatives" was enforced, shows that the basic principle of equal protection was violated in that persons similarly situated with regard to the purposes of the law were not similarly treated.

Therefore, the Court should deny the writ as improvidently granted. If the Court should consider the merits, it should affirm the judgment below.

I.

**The Judgment of the Supreme Court of California  
Rests Upon an Adequate State Ground.**

Petitioner's assertion that the California Supreme Court's judgment rests on the Fourteenth Amendment is misleading and wrong. That judgment rests on independent State grounds, viz., California's evolving public policy "that the mere presence of wealth or lack thereof in an individual citizen cannot be the basis for valid class discrimination" (*Dribin v. Superior Court*, 37 Cal. 2d 345, 348-50), the California Supreme Court's increasing

concern with the meaning which illuminates fundamental concepts of justice and equality when viewed in the light of recent social development and historical analysis\*, and finally the public policy which emerges as a result of these processes working in the retort of the California Supreme Court's authority to construe and apply California's constitutional guarantees of equal protection.\*\*

Analysis of the opinion below demonstrates that the California Supreme Court was consciously and expressly enunciating a new public policy which, while not unrelated to federal principles of equal protection, derives rather from the development of California's thought and experience than from any federal expression in the field of "relatives' responsibility" for state expenditures in support of mentally defective persons.

Thus, the Fourteenth Amendment is not mentioned even once as a basis for the decision below. To be sure, the principle of "equal protection" is the ground upon which that decision is expressly rested. But *California's Constitution*, no less than the federal constitution, re-

\*In its opinion below, the California Supreme Court said: " . . . we need not blind ourselves to the social evolution which has been developing during the past half century . . . former concepts which have been suggested to uphold the imposition of support liability upon a person selected by an administrative agent from classes of relatives designated by the Legislature may well be reexamined." *Dept. of Mental Health v. Kirschner*, 60 Cal. 2d 716, 722. And see tenBroek, *California's Dual System of Family Law: Its Origin, Development, and Present Status*, 16 Stan. L. Rev. 257, Part I, 16 Stan. L. Rev. 900, Part II, and the concluding portion of the study scheduled for publication in the spring 1965 issue of the Stanford Law Review.

\*\*California's Constitution is full of provisions and references dealing with the principle of equal protection. See, e.g., Calif. Const. Art. LV sec. 25; Art. XI secs. 5, 6, 11, 12, 14; Art. XII secs. 1, 5; Art. I sec. 11; Art. I sec. 21.

quires "equal protection" of law for all persons in California; and it is California's Constitution which contributes the adequate and independent state ground for the judgment below.

Indeed, Petitioner asserts that

"[o]nly six years ago the court below upheld this same liability against charges of denial of equal protection in an exhaustive and comprehensive opinion. *Dept. of Mental Hygiene v. McGilvery*, 50 Cal. 2d 742." (Pet. Br. p. 15.)

Ironically, this assertion argues *against* the Petitioner for *McGilvery* expressly upheld the liability in question against an "equal protection" attack on the ground that "Article I, section 11 of the California Constitution [which] requires that all laws of a general nature have a uniform operation" had not been violated by the challenged legislation since the latter did not constitute an unreasonable classification of persons upon whom that law was to operate and such persons were not subjected to unequal burdens. (50 Cal. 2d at 754.) The California Supreme Court noted too, though only in passing as it were, that the equal protection clause of the Fourteenth Amendment "has been similarly construed." (*Ibid.*) *McGilvery* expressed a California policy now abandoned.

For our purposes, the significance of *McGilvery*, is the clear identification of Article I section 11 of the California Constitution as the basis of the holding in that case. Of course, a statute which *satisfied* the requirements of that constitutional provision would be incapable of violating the equal protection clause of the Fourteenth Amendment inasmuch as both constitutional provisions were said to have the same *minimal* require-



ments. But, it does not follow that California may not *raise* its requirements, under its own construction of its own constitution, *above* federal minima. If California were to do so, the result would be that challenged legislation could be held to violate the requirements of Article I section 11 of the California Constitution *whether or not* it would satisfy the requirements of the Fourteenth Amendment. Such a decision would, of course (as the decision below does), speak the rhetoric of "equal protection"; but it would not follow from that fact alone that the sole ground of such a decision would of necessity be the Fourteenth Amendment. Yet it is precisely this untenable conclusion which the Petitioner urges upon this Court. Even if the California Supreme Court believed that the State and the Federal Constitution, *both* required the judgment below, the existence of the independent State ground would constitute an adequate non-federal basis for the purpose of insulating the California judgment from review by this Court.

The California Supreme Court's opinion is not ambiguous as to the basis upon which it rests; that basis, given the line of authority cited, the reasoning employed, and the public policy declaring function being served, is clearly a California constitutional development rather than a federal constitutional compulsion.

However, as this Court has repeatedly held,

"even if the State Court's opinion be considered ambiguous, we should choose the interpretation which does not face us with a constitutional question."

*Black v. Cutter Laboratories*, 351 U. S. 597.

But, having begged the question of the existence of an adequate state ground for the judgment below, Petitioner, with equal logic, seeks to enlist the assistance of Mr. Justice Holmes via his famous dissent in *Lochner*. Neither move would have escaped Holmes' quick condemnation as at best illogical. In addition, of course, they are misleading. For, if the Fourteenth Amendment does not enact Mr. Herbert Spencer's Social Statics, that amendment may be employed to defeat California's experimentation in the field of social welfare policy when dealing with mental illnesses any more than it may be employed to defeat New York's experimentation with regulating hours of work. Incongruously, the Petitioner would have this Court view a constitutionally authorized *departure* from a legislative pattern basically established by the poor laws of Queen Elizabeth as *preventing* social change, for that is the basis for the suggested analogy (assuming one might validly be made) between this case and *Lochner*. But, if Mr. Justice Holmes' dissent is to be invoked, its logic must be seen to cut quite the other way. For it matters not that here it is California's Supreme Court that has enunciated a new public policy rather than California's legislature. As this Court has previously noted,

"The fact that California's policy is expressed by the judicial organ of the State rather than by the legislature we have repeatedly ruled to be immaterial. . . . For the Fourteenth Amendment leaves the states free to distribute the powers of government

as they will between their legislative and judicial branches. . . . It is not for this Court to deny to a State the right, or even to question the desirability, of fitting its law to a concrete situation through the authority . . . given to its courts.”

*Hughes v. Superior Court*, 339 U. S. 460, 466-467.

What matters is that Petitioner is seeking the assistance of this Court to block and frustrate social change in circumstances which do not empower this Court to assert its jurisdiction. Quite independent of the merits of the change; regardless of the question whether and if so to what degree the merits are debatable; the facts are that California has made a change, that it has justified it in terms of its powers as a State, and that whether or not the Fourteenth Amendment compels such a change to be made, that Amendment certainly does not require or even authorize this Court to prevent it from being made. Indeed, Petitioner does not really argue that it does, for nowhere is it asserted that the elimination of “relatives responsibility” — were it done by California’s legislature — would violate any concept of equal protection. Clearly, there is no sufficient basis for this Court’s jurisdiction under 28 U. S. C. 1257 to be rested upon. The writ to the California Supreme Court should therefore be discharged as improvidently granted. *Cf. Wilson v. Loew’s, Inc.*, 355 U. S. 597 (1958).

II.

**The Equal Protection Clause of the Fourteenth Amendment Requires the Judgment Below to Be Affirmed.**

In this case, as indeed in all cases of "relatives' responsibility", it is important to understand that the litigation arises from the claim by the State that the person receiving welfare assistance is too poor to pay for the services which the State has provided.\* It is this basic fact, the poverty of the class of persons entitled to assistance under the State's welfare laws, which underlies the further classification of certain relatives of such persons as "responsible."

"Responsible relatives" are thus not those who have been assisted themselves under any welfare program of the State. Rather, they are involved only by virtue of liabilities imposed upon them by certain provisions of the welfare laws. These laws, in turn, have their origin in two different and sometimes conflicting, purposes that historically were part of the system of the Elizabethan poor laws as adopted in Tudor England in 1601. These purposes are first, the relief and rehabilitation of persons suffering from poverty and its effects; second, the reduction of the cost of the welfare program to the public.

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\*It is true that respondent disputes this claim; but the denial of the incompetent's poverty is really a quibble as may be seen from the fact first, that the total assets of the incompetent, \$10,903.35, were derived from the sale of the incompetent's realty, and second, from the fact that even respondent admits that the incompetent's assets are insufficient to cover costs if the petitioner is correct in their assessment, and if not, then respondent agrees that those assets are insufficient to cover future costs. See Resp. Br. pp. 5-6.

From the very beginning, it has been clear that welfare laws have been a response to the social phenomena of gross and chronic poverty; but, in addition, they have, for reasons of historical character, been linked with notions of fault, the morality of the criminal law, and vigorous efforts to place the financial burdens of welfare programs upon the relatives of the poor.

Thus, the struggle to eliminate the counter-welfare provisions that historically have been linked with the welfare system has been long and to date only partially successful. Certainly we are today far removed from the early legal equation of poverty with viciousness. Though the United States Supreme Court could refer to the "moral pestilence of paupers" in 1837 (*City of New York v. Miln*, 11 Pet. 102, 142), it is probably more correct today to say that this Court agrees that

"a man's mere property status without more, cannot be used by a state to test, qualify, or limit his rights as a citizen of the United States. 'Indigence' in itself is neither a source of rights nor a basis for denying them. The mere state of being without funds is a neutral fact—constitutionally an irrelevance, like race, creed or color." (*Edwards v. California*, 314 U. S. 160, 184-185, separate concurring opinion of Justice Jackson.)

Moreover, we have learned from recent decisions by this Court that fundamental rights may not be conditioned on ability to pay, though formerly it appeared that the same rights could so be conditioned. (*Griffin v. Illinois*, 351 U. S. 12; *Gideon v. Wainwright*, 372 U. S. 335.) These decisions appear to be part of a trend on the part of responsible governmental agencies to recognize the problems which flow from and are part of the

stubborn fact of poverty in our midst. Among those problems is the imposition of financial responsibility on the relatives of persons receiving welfare assistance in one form or another.

The recoupmnt of public expenditures for welfare assistance from the relatives of those assisted is in the nature of a regressive tax levied specially and discriminatorily upon persons selected on the basis of certain consanguineal ties to a class of persons too poor to pay for the assistance which society has concluded they require. The constitutional question is whether such a classification is violative of the guarantee of equal protection, and due process of law.

It is axiomatic that the guarantee of equal protection means that persons who are similarly situated with respect to the purposes of a constitutionally valid law must be similarly treated. It seems perfectly clear that it is constitutionally valid for a state to undertake to assist the blind, the disabled, the incompetent so that to whatever extent it is possible, these persons may be helped to overcome their difficulties and become self supporting members of the community and, failing that, that they may live within such bounds of decency and dignity as we are capable of helping them achieve. But, is it also constitutionally valid to say that the relatives of such persons, selected according to rules specially devised for the purpose, must bear the financial burden?

In what sense is it possible rationally to say that such a relative is situated differently from any other member of the public? It should be borne in mind that we are dealing here not with ordinary support obligations which apply to all alike, which are part of the civil family law of the state, but to support obligations which are



different from those of all except relatives of poor persons receiving welfare assistance, obligations found not in the Civil Code of the State, but in the Welfare Code.\*

If we measure whether persons are situated similarly to others by asking whether they stand in the same relation to the purposes of a valid law; and, if the purposes of welfare laws may be said to be ameliorative and rehabilitative; then it would seem to follow that relatives stand in the same relation to those purposes as do other members of the community.

It is the state which has created welfare institutions just as it has created institutions of education and of fire and police protection. It is the community's interest which justifies the creation of such institutions and the assumption by the public of the responsibility for their support. Yet in the typical welfare case, the assumption of financial responsibilities which the state has created is sought to be shifted to so called "responsible relatives." Why would it not be equally rational or constitutional to shift such financial burdens to the class of those who are red-headed? It is no answer to argue as does the petitioner that tradition establishes the rationality of the obligation. In the first place, tradition is not evidence of rationality; much less of constitutionality. More deeply, petitioner fails to realize that the tradition of which he speaks is from its inception one which is incompatible with the guarantee of equal protection inasmuch as it did not seek to protect all persons equally, but sought to

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\*For a detailed and analytical comparison of the Civil and the Welfare family law of California, see tenBroek, *California's Dual System of Family Law: Its Origin, Development, and Present Status*, Part II, 16 Stanford L. Rev. 1900 (1964).

protect the comfortable from the costs of assisting the destitute and afflicted though the amelioration of their plight served all society: This is the clear meaning of the history of the origin and development of the Elizabethan poor laws and their effects in our system of welfare law in California and in other states today.\*

Nor is petitioner's assertion that somehow the relatives of persons receiving assistance are specially benefited relevant to our constitutional inquiry. The "responsible relative" of a person receiving welfare assistance is no more specially benefited than is the relative of a person whose house has been saved from fire by the fire department specially benefited by the existence of a fire department. But, in any event, petitioner does not argue that provision of such "special benefits" should result in placing financial responsibility upon the relatives of the person whose house is saved in order to reimburse the community for the expenses incurred. For our analogy to be more apt however, we should focus on a class of persons who are too poor to have homes which contain built in protections against fire, and who, moreover, are too poor to pay for the services which they may require by virtue of their greater exposure to the hazards of fire. In this hypothetical situation if we were to say that their relatives of specified consanguineal degree must bear the financial cost of the fire prevention services which the community has provided then we would have a constitutional question similar to the one presented in the *Kirschner* case. What we would have to deal with

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\*See tenBroek, *California's Dual System of Family Law: Its Origin, Development, and Present Status*, 16 Stan. L. Rev. 257 (Part I) and 16 Stan. L. Rev. 900 (Part II). (The concluding part of this work is scheduled to be published in the spring number of the Stanford Law Review.)

would be the simple provision that poverty ought to be the pivot for official class discrimination against relatives of poor persons. But the actual facts presented in the *Kirschner* case are more persuasive that the requirement that persons similarly situated be treated similarly has been violated by the law of "responsible relatives" and that therefore the decision of the California Supreme Court is compatible with the Fourteenth Amendment and indeed required by it.

Under the law of "responsible relatives" persons in need and relatives of persons in need of assistance are placed in a doubly invidious position: Separate and unequal to begin with (in contrast to persons and relatives of persons not in need) the law itself superimposes upon that condition further separate and unequal conditions, namely, conditions of liability and responsibility not imposed upon others. Moreover, the law imposes the emotional disadvantages inherent in adding to the extra-normal requirements of attention and understanding which arise in such circumstances, the frequently fearsome burdens of financial responsibility.

Not only is such a classification patently and invidiously discriminatory, but in addition to strict constitutional considerations, it also violates notions basic to the welfare purposes of the laws. Persons afflicted with a disability need their family; but what they need from them is love, understanding, acceptance, encouragement. These necessary responses are frequently impossible when the person who needs them is seen by his family as a financial liability, a drain on resources all too frequently inadequate to the requirements of simple dignity. In such circumstances, hate rather than love, mistrust rather than understanding, hostility rather than

acceptance, discouragement rather than encouragement are the responses which may be forthcoming.

These considerations serve to point up the incongruity, the incompatibility, between the welfare purposes and the cost-cutting purposes of the welfare laws as we inherited them from Tudor England. To the extent that the decision below has struck at those aspects of the law which did not further the purposes of welfare but which merely continued a pattern of financial discrimination against the poor and their relatives, it has at once served the interests of welfare and the principle of equal protection of the law.

Further evidence of the constitutional need and justification for the holding below striking down section 6650 of the California Welfare and Institutions Code, can be found in the prior pattern of welfare recipients' relatives who were exempted from any financial responsibility whatever for the services rendered by the State.

For many years, the National Federation of the Blind and the California League of Senior Citizens had campaigned against any and all "responsible relatives" laws for the reasons generally stated above. In California, in 1961, this campaign was partially rewarded by the total elimination from the blind and disabled assistance programs of the notion of "relatives responsibility" (Calif. Welfare & Institutions Code Secs. 3011, 4011).

This victory was only *partial*. There is no rational basis for eliminating "relatives responsibility" for the blind and disabled and not for the mentally irresponsible and indeed all persons who are being assisted in one way or another under the welfare laws. Again, one might with equal justice eliminate "relatives responsibility" for

all red-headed persons receiving assistance under the welfare laws. This victory but further emphasized the irrationality of the "responsible relatives" concept as a basis of classification.

*Brown v. Board of Education* eliminated irrational classifications based upon race in the field of public education. That was a great though partial victory for the principle of equal protection. It served to point up the irrationality of the claim of "separate but equal" racial discrimination as being compatible with the Fourteenth Amendment. It made clear that a law whose purpose included invidious racial discrimination simply could not be justified under the Fourteenth Amendment.

Similarly, it ought to be increasingly clear that a law whose purpose includes invidious discrimination based on poverty is incompatible with the Fourteenth Amendment as recent decisions of this Court dealing with laws which discriminate invidiously against the poor and destitute seem to indicate. *Griffin v. Illinois*, 351 U. S. 12; *Gideon v. Wainwright*, 372 U. S. 335.

Because the law of "responsible relatives" constitutes an irrational series of classifications based upon constitutionally improper purposes, it is appropriate and just that the California Supreme Court has, by virtue of the opinion below, struck it down as in violation of equal protection. The California Supreme Court has recognized that the principle of equality requires state functions benefiting all persons in the state to be supported by state funds. If welfare extended to the blind and disabled is such a state function; if welfare extended to the dangerously insane is such a state function; then welfare extended to the mentally infirm must also be

such a state function. This is what the decision below holds.

Whether one is a relative of a person within one or another classification of those entitled to state assistance, one should be treated similarly to those who are not so related for purposes of supporting such state programs. For, with regard to the basic undertaking of the state to assist the destitute and the afflicted, all stand similarly situated. Were it otherwise, it would be possible to argue that Negroes should reimburse the school districts which must with all deliberate speed cease their discriminatory practices for any necessary expenses incurred in the process since the Negroes might be said to constitute the primary beneficiaries of this process. Indeed, to further the analogy, Negroes without means to pay such expenses could then become a charge upon their relatives who could be made "responsible."

But of course the short answer to all this is that (as is becoming increasingly clear) welfare, like education, or the provision of fire and police protection, is a basic state function benefiting all who live within the state. Therefore, questions as to who derives special benefit (the mentally gifted from education; the person whose home is saved from the flames by the firemen; the person who is protected against a criminal assault by the policemen) are all irrelevant. "Similarly situated" persons are persons who stand in the same relation to the valid purposes of a law, not persons who stand to gain more or less from the implementation of such purposes.

It is such "similarly situated" persons who are required to be treated similarly under the Fourteenth Amendment. The decision of the California Supreme



Court does just that for the field of welfare law in California as it is related to the citizens of California. It may therefore be said to be both consistent with and compelled by the principles of equal protection in the Fourteenth Amendment.

Petitioner, perhaps realizing that the notion of "responsible relatives" cannot be defended upon grounds of logic, seeks rather to stand on tradition. He argues that the concept is traditional. So it is. But it is a tradition incompatible with constitutional guarantees. As the California Supreme Court said, "we need not blind ourselves to the social evolution which has been developing during the past half century." Part of this tradition, stemming from 43 Elizabeth Chapter 2, is the development of a dual system of family law, one for the poor, another for the comfortable. Different concepts of responsibility emerge for the poor and for the comfortable from an analysis of these systems. Insofar as "relative responsibility" concepts differ from the responsibilities found in the family law of the comfortable, the poor are seen, in this tradition, to be at once a class to be assisted and also a class to be discriminated against fiscally. In origin, the discriminatory treatment accorded the relatives of the poor had nothing to do with the humanitarian purposes or the assistance purposes of the poor law. It was merely an attempt to reduce the costs of the welfare program to the public by concentrating its burdens upon the poor and their relations. Thus, the "responsible relatives" provisions of the poor law traditionally have militated against the purpose of reducing the burdens of poverty and its effects; they have militated rather in favor of maintaining a wall of separation between the poor and the comfortable; and they have sanctified the separation

of unequals by laws appealing to morality without making it perfectly clear that the morality appealed to is sheer class morality, morality for the poor, not morality for all. Such a tradition is in essence incompatible with equal protection of the law.

For the foregoing reasons it is respectfully submitted that the decision below is in accord with and required by the equal protection principles of the Fourteenth Amendment.

### **Conclusion.**

For the reasons stated in part I, the writ should be discharged as improvidently granted. But if this Court should consider the merits, the judgment of the court below should be affirmed for the reasons stated in part II.

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JOHN F. DAVIS, CLERK

# In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 111

DEPARTMENT OF MENTAL HYGIENE OF THE  
STATE OF CALIFORNIA,

*Petitioner,*

vs.

EVELYN KIRCHNER, Administratrix of the  
Estate of ELLINOR GREEN VANCE,

*Respondent.*

## Reply to Brief of Respondent

On Writ of Certiorari to the Supreme Court  
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Petitioner's Brief in Reply to Respondent's Brief will be directed to two points:

1. Reply to respondent's belated challenge to the Court's jurisdiction; and
2. Correction of respondent's misstatement of the California civil commitment law and the resultant erroneous conclusion.



**THIS COURT HAS JURISDICTION BECAUSE THE COURT BELOW  
INVALIDATED A STATE STATUTE SOLELY ON FEDERAL  
GROUNDS**

Respondent in opposing the Petition for Certiorari did not question the jurisdiction of this Court. Now in her brief on the merits, she denies that this Court has jurisdiction. It is asserted that the California Constitution contains an adequate state ground for the decision. Apparently this was not the view of the California Supreme Court.

For that Court explicitly based its decision solely upon the "equal protection clause." (R 56, 58)

Since that court found *Department of Mental Hygiene v. Hawley*, 59 Cal.2d 247, 379 P.2d 22 (1963) dispositive of the issue before it, its language here must be taken in conjunction with that used in *Hawley*. (R 55) In that case, although appellant Hawley contended the statute violated both the California Constitution and the Fourteenth Amendment of the United States Constitution, the court explicitly based its holding solely on "The Fourteenth Amendment." The court stated:

"The Fourteenth Amendment, in declaring that a State shall not 'deprive any person of life, liberty or property without due process of law,' gives to each of these an equal sanction; it recognizes 'liberty' and 'property' as co-existent human rights, and debars the States from any unwarranted interference with either.' (*Coppage v. Kansas* (1915) 236 U.S. 1, 17 . . . It has further been declared that 'Life, liberty, property, and the equal protection of the law, grouped together in the Constitution, are so related that the deprivation of any one of those separate and independent rights may lessen or extinguish the value of the other three.' (*Smith v. Texas* (1914) 233 U.S. 630 . . ." id at p. 256.

The California Constitution has no Equal Protection Clause and no Fourteenth Amendment.<sup>1</sup>

The California Court was fully cognizant of Article I, sections 11 and 21 of the California Constitution which require uniform operation of laws and the usual privileges or immunities provision. Respondent's quotation from *Department of Mental Hygiene v. McGilvery*, 50 Cal.2d 742, 329 P.2d 689 (1958) (Resp. Br. 2) amply demonstrates the California Court's ability to ground its decisions on both the provisions of the California Constitution and the Federal Constitution where it considers that both are applicable.

In this case it did not. We submit that the California court, because it felt impelled to do so, deliberately based its decision solely on the provisions of the Federal Constitution, implying that its decision could not be sustained under the California Constitution.

Respondent has drawn to the Court's attention *Indiana ex rel. Anderson v. Brand*, 303 U.S. 96, 98 (1937) (Resp. Br. 3-4) in which this Court said: "We cannot refuse jurisdiction because the state court might have based its decision, consistently with the record upon an independent and adequate non-federal ground."<sup>2</sup>

1. See *Bryant v. Zimmerman*, 278 U.S. 63, 69 (1928) where this Court established the federal question necessary to its jurisdiction by noting the reliance of the court below on the equal protection clause, the citation of federal authorities and the absence of an equal protection clause in the state constitution. Compare *Perkins v. Benguet Mining Co.*, 342 U.S. 437, 443, n.4 (1951).

2. See also *Stroble v. Calif.*, 343 U.S. 181, 194 (1952); *Takahashi v. Fish Comm'n.*, 334 U.S. 410, 414, n.4 (1948); *Steele v. L. & N.R. Co.*, 323 U.S. 192, 197, n.1 (1944); *Internat. Steel Co. v. Surety Co.*, 297 U.S. 657, 665-666 (1935); *Grayson v. Hodges*, 267 U.S. 352, 358 (1924), where this Court noted that the possibility of resolution of the case on an independent state ground does not disturb this Court's jurisdiction where the decision below in fact rested on a federal ground.

Moreover, to accept respondent's suggestion that an independent state ground can be tortured from the opinion below would still leave the decision at large with its erroneous constitutional language unexamined by this Court, as a threat to the similar statutes of 42 other states.

Since the validity of a state statute has been drawn in question and the state court found it invalid solely on federal grounds, regardless of which party prevailed, this court has jurisdiction by way of certiorari.<sup>3</sup> Y

## II

### **"DANGEROUS INSANITY" IS NOT A PREREQUISITE FOR COMMITMENT TO CALIFORNIA MENTAL HOSPITALS: THE PATIENT'S OWN NEED FOR CARE AND TREATMENT IS SUFFICIENT**

Respondent asserts that all patients at state mental hospitals such as Agnews State Hospital are and must be dangerously insane. (Resp. Br. 6-14) Relying solely on this erroneous assertion she concludes that state hospitals are primarily for the protection and benefit of the public and therefore the full expense must be borne by the state. (Resp. Br. 7) In other words, civil patients are no different from those patients charged with or convicted of a crime. Cited as authority that only the dangerously insane may be committed to state hospitals, is a 1915 case, *Matter of Harcourt*, 27 Cal. App. 642, 150 Pac. 1001 (1915) (Resp. Br. 9-10).

*Harcourt* passed on a statute requiring an adjudication that "... [such person] is so far disordered in mind as to endanger health, person, and property and that it is dangerous for life, health, person and property for such person [the patient] to be at large..." (Emphasis added.) (27 Cal.

3. 28 U.S.C. § 1257(3).

App. 642, 645). This was the law in 1915. This is not the law now. Mental hospitals today are primarily treatment centers, not custodial institutions. (Pet. Br. 24-28)

At present one may be classified as mentally ill and may be hospitalized if he is merely of such mental condition as to require supervision, care, treatment or restraint or is likely to be dangerous to himself or others. Welfare & Institutions Code, sections 5040 and 5100. In addition Welfare & Institutions Code section 6500 provides, "There are in the State the following state hospitals for the care and treatment of the insane: the mentally ill and the *mentally disordered*; . . . Agnews State Hospital . . ." (Emphasis added.) No longer need a civil patient manifest anti-social tendencies.

Respondent implies that all of the mentally disordered who are not dangerously mentally ill are committed to the care and custody of counselors in mental health. Welfare & Institutions Code Section 5076. Counselors in mental health act only in a supervisory capacity under the direction of the court. (§ 5076) Their role is similar to that of probation officers. This is only one of several alternatives available to the court in appraising what is best for the patient. See Welfare & Institutions Code section 5100. More significant is, that only three of the 58 counties in California have such counselors.

An ever increasing number of the patients in the California State Hospitals are voluntarily admitted for care and treatment. Welfare & Institutions Code section 6602. Charges are in accordance with section 6650 but admission is not dependent on pay status. These persons are not raving

maniacs, but recognize their illness and seek treatment for it as any sick person might do.

Dated: San Francisco, California;

January 13, 1965:

Respectfully submitted

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On Writ of Certiorari to the Supreme Court of the  
State of California

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1964

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No. 111

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DEPARTMENT OF MENTAL HYGIENE OF THE  
STATE OF CALIFORNIA, *Petitioner*,

v.

EVELYN KIRCHNER, Administratrix of the Estate of  
ELLINOR GREEN VANCE, *Respondent*.

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On Writ of Certiorari to the Supreme Court of the  
State of California

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Brief for the National Association for Retarded Children,  
Inc., and the American Orthopsychiatric Association  
*Amicus Curiae*

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**INTEREST OF THE AMICUS**

The National Association for Retarded Children, Inc., is a voluntary organization which is represented in every state by local and state member units. The Association is dedicated to promote the welfare of

mentally retarded persons of all ages. Among its specific objectives is the advancement of treatment, services and facilities for mental retardates and the development of broader public understanding of the problems of mental retardation.

The American Orthopsychiatric Association, with over 2,000 members, is one of the leading organizations in the United States concerned with problems of mental disorder and abnormal behavior. The Association seeks to coordinate and integrate the activities of specialists in medicine, psychiatry, clinical psychology, psychiatric social work, and other behavioral scientists who are concerned with normal and abnormal behavior.

The validity of state statutory provisions requiring citizens to pay part of the costs of relatives institutionalized by reason of mental deficiency or mental illness is of grave concern to each of these organizations.

### QUESTION PRESENTED

Whether state action imposing financial liability upon a citizen for the costs of institutionalizing a mentally ill or mentally retarded relative violates the Fourteenth Amendment.

### SUMMARY OF ARGUMENT

State action which imposes financial liability upon a citizen for the institutionalization of a mentally ill or mentally retarded relative violates the Equal Protection Clause of the Fourteenth Amendment.

The conceded purpose of statutes such as the California statute now before the Court is to raise revenue. The financial liability is imposed on the basis of a blood



relationship. The existence or non-existence of familial ties bears no relationship to whether one citizen has the ability to pay or should be required to contribute more than his fellow citizens for the maintenance of the public institutions of the state. The imposition of an unequal financial burden solely on the basis of family membership places an unjust economic burden on a few and may aggravate existing emotional strain upon the family and deprive well members of the family of economic and educational opportunities which could be enjoyed in the absence of the oppressive state action.

The invidious nature of the discrimination is made clearer by the recognition that the same financial burden is not placed on the families of persons suffering from different afflictions. In California the family, one of whose members is mentally deficient, can look to the state for hospitalization without the acceptance of substantial financial liability, while the family, one of whose members is mentally ill, may look forward to substantial payments for an indefinite period of time. In other states families of both the mentally retarded and the mentally ill are charged for care while families of the blind, deaf, the crippled, and the aged are exempted. Certainly nothing intrinsic to the conditions of mental illness or mental retardation justifies such discrimination.

The argument of unequal protection is buttressed by the absence of standards for assessment, the wide differentials in charges imposed, and the failure to relate charges to the services provided. In short, the California statutory scheme is a sophisticated device to segregate the families of the mentally ill and to impose a special tax against them for the purpose of subsidiz-

ing the operation of state facilities with no other justification than the existence of the family relationship.

The deep importance of the family unit and its significance in American society is recognized. However, the legislative classification on the basis of family bears no relationship to the admitted statutory purpose of raising revenue. The existence or non-existence of a moral obligation on the part of one member of a family to assist another member is not in issue. The issue is whether a state may impose financial liability on the families of the mentally ill on the asserted basis of such an obligation for the purpose of raising revenue. Amicus submits that nothing in the family relationship justifies such overt discrimination against families of the afflicted.

## ARGUMENT

### I. THE DIMENSIONS OF THE PROBLEMS OF MENTAL RETARDATION AND MENTAL ILLNESS

#### A. The Incidence of Mental Retardation and Mental Illness.

The resolution of the issues of the case require an understanding of the dimensions of the problems of mental illness and mental retardation in America.

Mental retardation and mental illness unquestionably pose serious problems of health and social and economic well-being which the nation must face in the latter part of the twentieth century.

According to the President's Panel on Mental Retardation<sup>1</sup> the mentally retarded are children and

<sup>1</sup> PRESIDENT'S PANEL ON MENTAL RETARDATION, A PROPOSED PROGRAM FOR NATIONAL ACTION TO COMBAT MENTAL RETARDATION 1-5 (1962). The following three paragraphs of text are derived from the aforementioned source.

adults who, because of inadequately developed intelligence, are significantly impaired in their ability to learn and to adapt to the demands of society. It is estimated that about 3 per cent of the population of the United States (or 6 million children and adults) are to be classified as mentally retarded. Some of the retardation is severe; most cases are relatively mild. About 126,000 babies born each year will be regarded as mentally retarded at some time in their lives. Mental retardation afflicts twice as many individuals as blindness, polio, cerebral palsy and rheumatic heart disease, combined. Only four significant disabling conditions—mental illness, cardiac disease, arthritis and cancer—have a higher prevalence. These afflictions tend to occur late in life while retardation comes early. About 400,000 adults and children are so retarded that they need constant care or supervision or are severely limited in their ability to care for themselves and to take part in productive work. The other 5 million suffer from milder disabilities. Over 200,000 adults and children, mostly from the severe and profound mentally retarded groups are cared for in residential institutions. From 15 to 20 million persons are members of families in which there is a mentally retarded individual.

Mental retardation does not respect station in life, income or geographic location. Nevertheless, there are striking variations in incidence within socio-economic groups and geography. A total of 716,000 persons or 4 per cent of those examined for the draft during World War II were rejected on the basis of "mental deficiency." Regional rejection rates ranged from 1 per cent in the Far West to nearly 10 per cent in the Southeast. Moreover, draft rejection rates for mental deficiency

were six times as high for nonwhites as for whites. Prevalence of mental retardation tends to be associated heavily with conditions leading to lack of prenatal care, prematurity of birth and high infant death rates.

Mental illness also rates as one of this nation's most serious problems. According to figures found in a 1958 report of the Joint Committee on Mental Illness and Health,<sup>2</sup> more than half of all hospital beds in this country are occupied by the mentally ill. At least 6 per cent of the total population is estimated to suffer from a serious mental disorder.<sup>3</sup> Out of the 980,000 disability discharges from the Army during the period December 1941 through December 1945, 43 per cent were for neuropsychiatric reasons.<sup>4</sup> Not only are there a large number of persons requiring treatment for mental illness, but the estimated duration of the needed treatment is substantial. Out of 500,000 resident patients in state mental hospitals, an average of one-fourth have been hospitalized for more than 16 years, one-half for more than 8 years, and three-fourths for more than 2.5 years.<sup>5</sup> The direct and indirect annual costs to the American economy resulting from mental illness has been estimated at a minimum of 2.4 billion dollars.<sup>6</sup>

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<sup>2</sup> FEIN, *ECONOMICS OF MENTAL ILLNESS AND HEALTH* (Report to Joint Commission on Mental Illness and Health, Monograph Series No. 2) (1958) 4.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> *Id.* at 132.

**B. State Action to Meet the Problems of Mental Illness  
and Mental Retardation.**

Maintenance expenditures in public mental hospitals increased from about \$618,000,000 in 1955 to over one billion dollars in 1962. At the end of 1962, there were 515,948 resident patients.<sup>7</sup>

Maintenance expenditures for public institutions for the mentally retarded amounted to almost \$326,000,000 in 1962, an increase of over 200 per cent since the period 1953-55 while the number of resident patients for the same period of time increased 24.4 per cent to a 1962 figure of 173,699.<sup>8</sup> State and county general mental institutions in 1963 had an average daily resident population of 511,708. These institutions spent a total of \$1,084,713,981 on maintenance, resulting in an annual expenditure per resident patient of \$2,119.79.<sup>9</sup> Average annual expenditures for individual states per resident patient range from a low of \$1,037.95 in Mississippi to a high figure of \$6,953.94 for Alaska, while California stands somewhat above the national average with a figure of \$2,818.75.<sup>10</sup> With respect to the mentally retarded, public mental institutions spent a national average of \$1,858.51 per resident patient during 1962. Individual annual state expenditures per resident patient range from a low of \$657.79 for Mississippi to a high of \$3,442.75 for Kansas, while California spends \$2,910.95.<sup>11</sup> Thus it is clear that

<sup>7</sup> U.S. DEP'T OF HEALTH, EDUCATION, AND WELFARE MENTAL HEALTH STATISTICS CURRENT REPORTS, SERIES MHB-H-7, Jan., 1963 at 5.

<sup>8</sup> *Id.* SERIES MHB-I-7, April, 1963, at 5.

<sup>9</sup> *Id.* SERIES MHB-H-8, Jan., 1964, at 8.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Id.* SERIES MHB-I-7, April, 1963, at 11.

most states have recognized the growing problems of mental illness and retardation and have appropriated large sums in an effort to alleviate them.

### C. Conditions in State Mental Institutions.

The problems of the states in caring for the mentally retarded was emphasized in President Kennedy's message to the 88th Congress on February 5, 1963 when he pointed out:

State institutions for the mentally retarded are badly under-financed, under-staffed and overcrowded. The standard of care is, in most instances so grossly deficient as to shock the conscience of all who see them.<sup>12</sup>

Moreover, almost 20 per cent of the 278 state mental institutions are fire and health hazards by the standards of their own state laws and regulations. This percentage will constantly increase since more than one-half of these institutions were opened before the beginning of the century.<sup>13</sup> Despite efforts to the contrary, only a small percentage of state institutions can be said to be therapeutic and not merely custodial. In 1959, for example, the ratio of psychiatrists to patients in these institutions was 1 to 500 while according to the standards of the American Psychiatric Association, the state mental institutions are only 20 per cent adequately staffed with nurses, 35 per cent with social workers, 65 per cent with psychologists, and 45 per cent with psychiatrists.<sup>14</sup> Moreover, the average expenditure

<sup>12</sup> U.S. DEP'T OF HEALTH, EDUCATION AND WELFARE REPORT TO THE PRESIDENT: IMPLEMENTATION OF MENTAL RETARDATION PROGRAMS, (1964) at 80.

<sup>13</sup> H.R. REP. NO. 694, 88th Cong., 1st Sess. (1963) U.S. CODE CONG. & AD. NEWS, at 1064.

<sup>14</sup> *Ibid.*



per patient day in state mental institutions is about \$4.50 as compared with \$12 in the Veterans' Administration psychiatric hospitals and about \$32 per day in community general hospitals.<sup>15</sup> This low standard of care affects the duration of time that a patient must spend in the state institution. Thus, the average stay of patients suffering from schizophrenia, the most common of the severe mental disturbances, is nearly 11 years, despite the fact that it is possible to rehabilitate as many as 4 out of 5 such patients in a much shorter period of time.<sup>16</sup>

Similar overcrowded, understaffed, and obsolete conditions exist for the mentally retarded in state institutions. As of 1960, about 160,000 of the mentally retarded were in 108 residential public institutions specifically designated for their care. Another 10,000 were in private institutions and the remaining 43,000 cared for in public hospitals for the mentally ill. On the average, each institution was caring for 350 patients in excess of stated capacity and had a waiting list of more than 300.<sup>17</sup>

#### **D. Limited Federal Assistance to the States.**

In recognition of the magnitude and importance of mental health as a national problem, the Federal Government has authorized substantial sums to bolster state action.

However, the major thrust of Federal effort is addressed to non-institutional programs. Moreover, persons otherwise eligible for old-age assistance, perma-

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> *Id.* at 1062.

ment and total disability assistance and other categorical aid programs of whose cost the Federal Government bears a substantial fraction become ineligible for such assistance when hospitalized in public mental institutions. The extent of the contribution of the Federal Government to support outside of institutions may be gauged by the fact that in the category of aid to permanently and totally disabled alone, about 80,000 retarded adults will receive payments during the fiscal year 1965 at a cost of over \$40,000,000.<sup>18</sup> The Federal Government also makes no formula grants to sustain the services of public mental institutions and its incidental contributions to direct services through special project grants amount to less than 2% of the total cost of operating these institutions.<sup>19</sup> Thus, in contrast to other health and welfare programs the burden of long-term in-hospital care falls almost entirely on the states or counties, the patients and their relatives.

Both the Bureau of Family Services programs of the Department of Health, Education and Welfare and the Social Security Administration are deeply committed to financial assistance for income maintenance of the mentally retarded. Thus, in the category of aid to the permanently and totally disabled, about 80,000 retarded adults will receive payments during fiscal year 1965 at a cost of over \$40,000,000.<sup>20</sup>

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<sup>18</sup> U.S. DEP'T OF HEALTH, EDUCATION, AND WELFARE REPORT TO THE PRESIDENT: IMPLEMENTATION OF MENTAL RETARDATION PROGRAMS (1964), at 92.

<sup>19</sup> The major contribution is the recently inaugurated \$6,000,000 Hospital Improvement Program.

<sup>20</sup> U.S. DEP'T OF HEALTH, EDUCATION, AND WELFARE MENTAL RETARDATION, FISCAL YEAR 1965 PROGRAM OF THE U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE (1964), at 28.

## E. Methods and Extent of State Collections From Private Persons.

### 1. Varying techniques employed by states in assessing liability.

The several states differ considerably in the manner by which they attempt to assess financial liability against private persons. One of the chief areas of difference is in the classification of which persons shall be liable. The extent of the variations precludes exhaustive treatment. However, certain patterns are clear. As a rule, liability for at least part of the cost of care in state mental institutions is imposed on the patient or members of his family.<sup>21</sup> Five states, Arizona, New Mexico, South Carolina, South Dakota and Georgia limit statutory liability to the estate of the patient. Each of the 45 remaining states places some type of liability upon other members of the patient's family.<sup>22</sup> In some states for example, California, Nevada, Michigan, New York and Oregon,<sup>23</sup> the liability imposed may be joint and several. In other states, differing priorities for liability purposes have been established.<sup>24</sup> The most common classification limits liability to spouses, parents and children. At least nine states, however, impose a support liability upon more remote relations such as grandparents, grandchildren, brothers and sisters.<sup>25</sup>

Another substantial variation among the states is in the range of expenses for which liability is created.

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<sup>21</sup> Mernitz, *Private Responsibility for the Costs of Care in Public Mental Institutions*, 36 IND. L. J. 443, 450 (1961).

<sup>22</sup> *Id.* at p. 451.

<sup>23</sup> *Id.* at p. 451, n.27.

<sup>24</sup> *Id.* at p. 451, n.28.

<sup>25</sup> *Id.* at p. 451.

Among the states which require payments from parents of the mentally retarded, for example, there is a total lack of uniformity. It has been stated as of 1960:

Of these 40 states, 4 charge for minors only, and Iowa charges only for patients between the ages of 21 and 50 years, leaving 35 states which can collect amounts, adjusted from maximum legal charges varying from \$20-\$180 per month, for as long as the mentally retarded patient may live or the finances of the parents (living or dead) can provide. In 8 states (Delaware, Kansas, Nevada, New Hampshire, New York, Ohio, Oregon, Pennsylvania) even the difference between the adjusted monthly charge and the maximum legal charge accrues as a debt to the state.<sup>26</sup>

Many but not all states base their statutory charges on the per capita costs of the institutional program of the state. A study made by the National Association for Retarded Children in 1963 shows that the number of these states increased from 20 in 1956, to 28 in 1960-61.<sup>27</sup> In answer to a questionnaire seeking information as to the items that each state includes in its per capita cost figure, 28 states responded as follows: 28 include food, lodging, medical care and staff salaries; 27 include formal education programs; 26 include costs of rehabilitation; 24 include staff training and building repair and maintenance; 1 state includes

<sup>26</sup> Eagle, *Charges for Care and Maintenance in State Institutions for the Mentally Retarded*, 65 AMERICAN JOURNAL OF MEDICAL DEFICIENCY (1960) quoted in Legislative Research Bureau, *Reimbursement for Care of Mental Patients: A Compilation of State Programs and Policies*, Mass. H. Rep. No. 3380 (Feb. 19, 1962), at 11.

<sup>27</sup> THE COMMITTEE ON RESIDENTIAL CARE OF THE NATIONAL ASSOCIATION FOR RETARDED CHILDREN, *CHARGES FOR RESIDENTIAL CARE OF THE MENTALLY RETARDED* (1963) at 9 and Fig. 8 of Appendix.

capital outlay for building construction.<sup>28</sup> Other items taken into account in computing per capita cost in most states are police and fire protection, and research. Many states include even the cost of clothing for indigent residents in the charges made on a per capita cost basis.<sup>29</sup>

In this connection, it is important to note that states makes no allowance for the value of the work performed by some patients within the institution in computing the cost for which a claim is made upon relatives or upon the estate of those patients. Work performed by patients is substantial and has an important effect on institutional operating costs. Failure to take this into account is a further source of inequity. Cf. *In re Stobie's Estate*, 30 Cal. App. 2d 525, 528, 86 P. 2d 883, 886. (1939)

There is also a great deal of variation among the states as to the maximum daily fees chargeable against both the mentally retarded and the mentally ill. The following chart<sup>30</sup> shows the groups of states matched with the maximum daily charges:

Maximum Daily Charges	For Mentally Ill	For Mentally Retarded
No charge	0 states	3 states
Up to \$3.00	12 states	20 states
\$3.01 to \$4.00	5 states	8 states
\$4.01 to \$5.00	13 states	11 states
\$5.01 to \$6.00	10 states	5 states
\$6.01 to \$7.00	2 states	3 states
Over \$7.00	8 states	0 states

<sup>28</sup> *Ibid.*

<sup>29</sup> *Id.* at 10.

<sup>30</sup> Legislative Research Bureau, *Reimbursement for the Care of Mental Patients: A Compilation of State Programs and Policies*, MASS. H. REP. No. 3380, at 13 (Feb. 19, 1962).

A recent study points out that in spite of high and steadily rising charges in many states that make a pretense of attempting to recover the cost of care, only a very small portion of the institution budget is actually recovered in charges.<sup>31</sup> The greatest share collected in any state is about 12 per cent, and two-thirds of the states reporting collected less than 8 per cent.<sup>32</sup>

The burden of payment also falls unequally on private persons among the several states. Only a small percentage pays the full charge—in some states no one pays in full, and in no state do more than 10 per cent pay this amount.<sup>33</sup> The percentage of residents who pay part of the statutory charge varies from 5 per cent to 60 per cent, depending upon the state; a high percentage, between 25 and 96 per cent, pay nothing.<sup>34</sup> At least part of the explanation for the above fluctuations has been attributed to the range of income distribution for American families. Thus, for 1960, U. S. Internal Revenue Service figures show that about one out of three American families earns less than \$4,000 per year (about \$11.00 per day) and that more than one out of every two families earns \$6,000 or less (about \$16.70 per day).<sup>35</sup>

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<sup>31</sup> THE COMMITTEE ON RESIDENTIAL CARE OF THE NATIONAL ASSOCIATION FOR RETARDED CHILDREN, CHARGES FOR RESIDENTIAL CARE OF THE MENTALLY RETARDED 12 (1963).

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> *Id.* at 12 and Fig. 4, Appendix. See Chart of Maximum Charges, *supra*, which indicates that 33 states can charge over \$4.00 per day for the mentally ill and 19 can charge above this amount for the retarded.



It also is possible that a relative who, during his lifetime, was not required to pay the full statutory charge might have the accrued unpaid charges assessed against his estate, thus depriving the next generation of the benefit of these resources.<sup>36</sup> As one commentator has stated:

Depriving a dependent of an inheritance may shift his dependency to the state, costing the state more in the long run than any amount it may realize by pressing collection.<sup>37</sup>

Besides California, the statutes of Colorado, Iowa, Maryland, Minnesota, Nevada, New York, Oregon and Vermont provide that the difference between the adjusted rate or charge and the maximum charge shall accrue as a debt collectible from the estate of the patient and, in some cases, from the estate of any liable relative.<sup>38</sup>

Although there are many variations in the effect of collection programs in the states, there is one trend which is clear. Available data from 39 states as to amounts collected from mentally ill patients indicates that collections from them or their relatives in 30 states increased by more than 10 percent in 1959, and,

<sup>36</sup> Cf. *Department of Mental Hygiene v. Shane*, 142 Cal. App. 2d 881, 299 P. 2d 747, 749 (1956) where the Court stated: "The Code does not mention the size of the deceased's estate as having any bearing on the right to recover. It might be that during his lifetime a man would not be able to pay for hospitalization of an incompetent son or the father by good fortune might accumulate a substantial estate late in life. Irrespective of that, whatever estate he does have is liable. . . ."

<sup>37</sup> Mernitz, *Private Responsibility for the Costs of Care in Public Mental Institutions*, 36 IND. L.J. 443, 456 (1961).

<sup>38</sup> *Id.* at 456, n. 44.

of these states, 11 showed an increase of more than 20 per cent.<sup>39</sup> With respect to collections for the mentally retarded, there was an increase of more than 10 per cent in 21 out of 33 states reporting between 1958 and 1959 and, as to 12 of these 21, an increase of more than 20 per cent.<sup>40</sup>

**2. Lack of statutory standards for administrative determination of ability to pay.**

It is clear that in no state is the maximum legal liability of a patient or his relative actually enforced. Apart from the usual cases where the money claims cannot be processed or collected, the explanation seems to lie in the attempts by the states to vary the actual charges collected, based on "ability to pay." Thus, Section 6651 of California's Welfare and Institutions Code sets the liability under the law as the statewide average per capita cost of maintaining mentally ill patients in all state hospitals as determined by the Director of Mental Hygiene. Upon satisfactory proof of inability to pay by the person liable, the Director may reduce, cancel or remit the amount to be paid. A search of these statutes, however, fails to indicate the elements of such "satisfactory proof" or any guidelines for the administrative decision of who is able to pay and who is not.

The lack of recognized standards for determining ability to pay leads to a great disparity in the amounts exacted throughout the nation. A recent study collected information from the various state agencies as to the amount that would be assessed for one patient

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<sup>39</sup> Legislative Research Bureau, *Reimbursement for the Care of Mental Patients* *supra* note 26 at 14.

<sup>40</sup> *Id.* at 14-15.

against a sample family of three with no unusual debts or assets and with a gross income of \$6,000 per year.<sup>41</sup> Nine states stated for such a family there would be "no charge," eight states stated that they could specify "no set charge," 12 states gave a firm amount or range of amounts from \$300 to \$980 per year, and 11 states gave amounts which the charge would be "less than" ranging from about \$100 to about \$900.<sup>42</sup>

The financial impact upon the above sample family's standard of living is indicated by Department of Labor statistics.<sup>43</sup> These figures show a breakdown in the average family budget as follows:

Food and Beverage .....	\$1630
Housing .....	1370
Clothing .....	560
Medical .....	300
Transportation .....	540
Recreation, Personal, Gifts, Miscellaneous .....	720
Insurance .....	260
Taxes .....	620

<sup>41</sup> Cf. Eagle, *Charges for Care and Maintenance in State Institutions for the Mentally Retarded*, 65 AMERICAN JOURNAL OF MENTAL DEFICIENCY, 199-207 (1960) as summarized in THE COMMITTEE ON RESIDENTIAL CARE OF NATIONAL ASSOCIATION FOR RETARDED CHILDREN, CHARGES FOR RESIDENTIAL CARE OF THE MENTALLY RETARDED (1963) at 15 and Fig. 14, Appendix.

<sup>42</sup> *Ibid.*

<sup>43</sup> U. S. DEP'T OF LABOR THE INTERIM CITY WORKER'S FAMILY BUDGET, MONTHLY LABOR REVIEW, REPORT NO. 2346 (1960) as cited in THE COMMITTEE ON RESIDENTIAL CARE OF THE NATIONAL ASSOCIATION FOR RETARDED CHILDREN, CHARGES FOR RESIDENTIAL CARE OF THE MENTALLY RETARDED (1963) Fig. 15, Appendix.

The payment to the state government of up to \$900 per year for a substantial period of time would certainly impair some major aspect of that family's future development.

The states do not legislate in the same manner with reference to other afflictions. A 1958 study reveals drastic variations in the financial burdens then imposed by the states upon relatives of the mentally ill and mentally retarded as distinguished from relatives of persons with other disabling illnesses.<sup>44</sup> The following chart indicates that many states that charge for support of the mentally ill and retarded, do not charge at all for the blind, deaf, crippled, and the aged:<sup>45</sup>

Institutions for:	Number of states that:	
	Charge	Do Not Charge
Mentally retarded	41	5
Mentally ill	29	4
Blind	4	31
Deaf	4	29
Crippled	3	28
Aged	2	27

**II. THE CALIFORNIA STATUTE WHICH IMPOSES FINANCIAL LIABILITY UPON RELATIVES AS A CLASS FOR THE SUPPORT OF PATIENTS IN TAX-SUPPORTED STATE HOSPITALS CONTRAVENES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.**

Section 6650 of the California Welfare and Institutions Code provides that the husband, wife, father, mother or children of a mentally ill person or inebri-

<sup>44</sup> See generally SMITH, A STUDY OF THE SYSTEM OF INSTITUTION CHARGES FOR THE MENTALLY RETARDED IN VIRGINIA AND THE NATION (1961).

<sup>45</sup> Id at Fig. 1, Appendix.

ate and the estates of such person shall be liable for the patient's care, support and maintenance in a state institution of which he is an inmate. Apart from the imposition of liability upon spouses, who have given adult consent to the assumption of responsibility for the other spouse, and the patient himself, the statute singles out those taxpayers who happen to be a relative of a person stricken with mental illness and, for the sole purpose of raising additional revenue, imposes a substantially greater financial liability to the state. The application of this statute to respondent violates the equal protection guarantee of the Fourteenth Amendment.<sup>46</sup>

Amicus does not deny that a state legislature must be able to classify in order to deal with particular subjects, situations or persons. Likewise, it appreciates that every effort at classification may not be subjected to valid constitutional challenge.

However, the mandate of the Equal Protection Clause requires, "the uniform treatment of persons standing in the same relation to the governmental action questioned. . . ." *Reynolds v. Sims*, 377 U.S. 533,

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<sup>46</sup> While California distinguishes between the mentally ill and the mentally retarded in its statutory scheme, relative contribution for the support and maintenance of the mentally retarded as well as the mentally ill will be affected by this decision, for a number of contribution statutes apply to both classes of patients; e.g., Connecticut, Illinois, Indiana, Michigan, New Jersey, Ohio, Oregon, Pennsylvania, Virginia, and Wisconsin. CONN. GEN. STAT. §§ 17-294, 295-98 (1963); ILL. STAT. ANN. ch. 91½ § 9-19 (1951); IND. ANN. STAT. §§ 22-401a-401d, 402, 405 (1935); MICH. STAT. ANN. § 14.811 (Supp. 1963); N.J. STAT. 30:4-66 (1953); OHIO REV. CODE ANN. §§ 5121.03, 5121.06 (Page Supp. 1960). ORE. REV. STAT. §§ 176.630, 427.055 (1959 Repl.); PA. STAT. ANN. tit. 1361 (Supp. 1960) tit. 71 § 1783; VA. CODE ANN. § 37-125.1 (Supp. 1964); WIS. STAT. ANN. § 46.10 (Supp. 1964).

565. The dominant consideration in judging the validity of a legislative classification is the relationship between the essential characteristics of the class singled out for special treatment and the objectives of the legislation. This Court has pointed out in *Walters v. City of St. Louis*, 347 U.S. 231, 237, that the classification must "rest on real and not feigned differences, . . . the distinction [must] have some relevance to the purpose for which the classification is made, and . . . the different treatments [must] not be so disparate, relative to the difference in classification, as to be wholly arbitrary. . . ." See also *Morey v. Doud*, 354 U.S. 457, 465. It must be determined, therefore, whether there is an arbitrary discrimination between those classes covered by the state law and those who are excluded. *McLaughlin v. State of Florida*, — U.S. —, 85 S. Ct. 283, 288.

Petitioner seems to imply at some stages of its argument that the objective of the statute is to benefit the patient or his relatives by reinforcing the familial obligation to aid a fellow member of the family in time of hardship (Brief, p. 22) while at another point it feels constrained to admit that the fundamental purpose of the legislation is to raise revenue (Brief, p. 6). It seems clear that the plain language of Section 6650 requires the second conclusion. The Supreme Court of California has recognized this to be the fact in *Department of Mental Hygiene v. McGilvery*, 50 Cal. 2d 742, 755, 329 P.2d 689, 695 (1958):

The obvious purpose of the particular provisions of the statute here involved (§ 6650) is to minimize the cost to the state and its agencies in providing assistance to the needy and distressed, by exacting contributions from persons standing in close relationship to those assisted.



If the purpose of the instant statute is to raise revenue for public purposes, then it follows that the demands of the Fourteenth Amendment can be satisfied only if the statute singles out a class whose members are better able to supply that revenue than those who are excluded from the class at least where there is no other distinguishing characteristic that justifies the discriminatory treatment. It is common knowledge that the incidence of mental illness or retardation is in no way factually related to the wealth or poverty of the victim or of his relatives. *Cf.* Hollingshead and Redlich, *Social Class in Mental Illness* (1958). Some families with mentally ill members are rich; some are poor; some fall in the middle group. The classification based on family relationship simply bears no relationship to the statutory object of raising revenue.

Petitioner seeks to justify the imposition of the financial burden upon the ground of an underlying moral obligation. Amicus submits that it is unnecessary to determine whether such an obligation exists. Indeed, it may be questioned whether a court of law is a proper forum for the determination of such an issue. Amicus does contend, however, that even if it is assumed that a moral obligation exists upon a child to care for a parent, the existence of such an obligation confers no power in the state to justify the imposition of a financial liability of the kind imposed in this case upon a member of the family. The state certainly does not have the authority to determine that the extent of the obligation is the statewide average per capita cost of care of all mentally ill patients in all hospitals in the state. *Cf.* Cal. Welf. & Inst. Code § 6651.

If the statute is to be justified it must meet the ordinary tests of legislative classifications—a reasonable relationship between the object sought to be achieved and the distinguishing characteristics of the class upon whom the economic burden is to be placed. It is a mockery of the moral law to justify state taxation under the guise of implementing the child-parent relationship.

The inherently discriminatory nature of the instant classification reveals itself in other ways. Thus, as we have summarized above, there are irreconcilable variations in the amounts actually exacted from families of comparable income throughout those states which impose charges. It can hardly be argued that the nature and treatment of mental illness or mental retardation differ based on the geographical location of the patient. If the problem is common to all the states the explanation for the incomprehensible variations in the charges to be assessed may be found in arbitrary administration of these statutes. This again may stem from the fact that few state legislatures have supplied adequate guidelines for state collection agencies as to the determination of who shall be forced to pay and how much. The Welfare and Institutions Code of California, for example, does not provide any formula for determining relative ability to pay nor does it even list those elements of assets and liabilities which are to be considered relevant by the administrator in determining ability to pay. Section 6651 of that Code merely allows for adjustment of the payment "on satisfactory proof" that the estate or relatives are unable to pay the full per capita cost. Far from setting standards, the section

appears to place the burden of proof upon the relative or other party to establish inability to pay based on standards not supplied.

An additional indication of the unfair operation of statutes attempting to recoup the costs of public hospitals in the various states is the radically different treatment given to various kinds of major afflictions. As the chart set forth previously indicates the majority of the states exact some charge from patients and relatives of patients who are mentally ill and mentally retarded while a large number exact no charge from relatives of persons afflicted with blindness, deafness, and crippling illnesses. We see no rationale that would justify setting up a difference of financial liability on the relatives of those in public institutions for the mentally ill or mentally retarded where the state has determined that it is in the public interest not to exact such liability from relatives of persons with other serious and disabling afflictions.

The unfair burden upon relatives is heightened by facts indicating that the trend is for the states to expand and improve existing facilities for the mentally ill and mentally retarded. So urgent has the financial need become that the states have turned to the federal government for funds, and the federal government has responded. Clearly the problem of hospitalization for the mentally ill and mentally retarded has reached such a scale of magnitude as to preclude the imposition of the heavy burdens of support on any single group of citizens. On the contrary, modern society's increasingly recognized duty is to

assist those of its citizens confronted with catastrophic financial burdens by spreading the duty of support among all of its citizens. While it has always been understood that the family benefit from treatment of its sick members, we have progressed to such a point of social awareness that every citizen should be concerned when mental illness or retardation strikes at any other citizen and should recognize the benefits conferred upon himself and society when a fellow-citizen, though he be a stranger, receives needed care and rehabilitation at the hands of the state.

California, like others of its sister states, has erected and continues to maintain a complex and growing system of state hospitals for the mentally ill and for other afflictions. Many millions of dollars have been expended in the support and maintenance of these facilities. The construction and maintenance of these institutions are financed out of taxes collected from all taxpayers, whether or not these taxpayers chance to be related to persons afflicted with mental illness or mental retardation.

Any funds collected from the relatively small group of those made liable by the statute would tend to reduce proportionately the general taxpayer's liability. The substantial resources expended by California and other states in the construction, staffing and maintenance of these hospitals demonstrates an almost universal recognition of their importance to all citizens. Where a state has undertaken to employ general tax funds to create a complex of state hospitals, there appears no sound reason why the right of all the citizens of that state to enjoy the facilities on an

equal basis should be denied. *Cf. Griffin v. County School Bd. of Prince Edward County*, 377 U.S. 218.<sup>47</sup>

The projected increase in the costs of hospitalization which will be necessary to alleviate the presently existing deficiencies in the care of the mentally ill and the mentally retarded preclude a realistic assumption that any significant portion of future costs may be collected from families of the afflicted. At the present time no state collects more than 12 per cent of its institutional budget through this device and most collect less than 8 per cent. To sustain the decision of the Supreme Court of California would not pose a grave economic catastrophe for any state. Diminution of existing revenues from families would have an infinitesimal effect when spread over the general tax structure of a state.

On the other hand, the relief granted to each oppressed family would be significant. The results would

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<sup>47</sup> It is no answer to the patterns of discrimination evidenced in the statutes discussed that the injured relative may seek relief through legislative change. Such a contention is highly unrealistic. No matter how great the dimensions of the problems of mental illness and mental retardation become in the future, the patients and their families will always remain a small minority, relatively powerless to bring about the necessary legislative changes. Obviously, it is politically hazardous to propose an increase in general taxes in order to remove an unfair burden from a small percentage of voters even though the resulting increase in the share of each taxpayer will be relatively small. The unfortunate families who have financial burdens added to the emotional tragedy of mental illness and retardation can hardly hope for prompt legislative rescue.

To sustain the constitutionality of statutes such as the one now before the Court is to doom the relatives of the mentally ill and the mentally deficient to the systematic imposition of greater financial liabilities.

be seen in a higher standard of living and greater economic and educational opportunities for members of families now suffering under the weight of special revenue statutes such as that now before the Court.

### CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgment of the Court below should be affirmed.

Respectfully submitted,

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